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Report of the Secretary-General on the implementation of the decision of the Council in 2017 relating to the summary report of the Chair of the Legal and Technical Commission

Preliminary strategy for the development of regional environmental management plans for the Area

Report of the Secretary-General

I. Introduction and background

1. The purpose of the present report is to provide the Council with the outline of a coordinated strategy for developing regional environmental management plans under the auspices of the Authority, in line with relevant decisions of the Council.

2. A first regional environmental management plan for the Clarion-Clipperton Zone was approved by the Council in 2012, on the recommendation of the Legal and Technical Commission (see ISBA/18/C/22). In approving the plan, the Council recalled the provisions of articles 145 and 162 of the United Nations Convention on the Law of the Sea, as well as the reaffirmation by the General Assembly, in its resolution 63/111, of the need for States, individually or through competent international organizations, to urgently consider ways to integrate and improve, based on the best available scientific information and the precautionary approach and in accordance with the Convention and related agreements and instruments, the management of risks to marine biodiversity. The Council also considered that a comprehensive environmental management plan at the regional level was one of the measures appropriate and necessary to ensure the effective protection of the marine environment of the Area from harmful effects that might arise from activities in the Area, in accordance with article 145 of the Convention.

3. Since 2012, the Council has repeatedly called upon the secretariat and the Commission to make progress on the development of similar regional environmental management plans in other parts of the Area, in particular where there are currently contracts for exploration.[1] Those calls have also been reflected in the resolutions of

* ISBA/24/C/L.1.

[1] See, for example, ISBA/20/C/31, para. 9, ISBA/21/C/20, para. 10, ISBA/22/C/28, para. 11, and ISBA/23/C/18, para. 16.

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the General Assembly.[2] In addition, in 2014, and in the context of the Commission's work on regulatory development, the Council requested the Commission to consider, as appropriate, a submission by the Netherlands on environmental management plans (see ISBA/20/C/31).

4. Little progress has been made on this matter to date, although the Commission has reported regularly to the Council on the implementation of the regional environmental management plan for the Clarion-Clipperton Zone (see, for example, ISBA/23/C/8, para. 19), and has also held a general discussion on the approach to the development of regional environmental management plans and the need for environmental data from contractors and open sources to be made available for that purpose. In March 2017, the role of such plans in managing activities in the Area was further discussed at the international workshop entitled "Towards an ISA Environmental Strategy for the Area" that was held in Berlin.[3] In his report to the Council of July 2017, the Secretary-General indicated that he had taken note of the views expressed by the Council in relation to the importance of regional environmental management plans and proposed to give consideration to how best to initiate action in that respect, taking into account budgetary constraints (ibid., para. 23).

II. Broad objectives and guiding principles of regional environmental management plans for the Area

5. In broad terms, the objective of regional environmental management plans is to provide the relevant organs of the Authority, as well as contractors and their sponsoring States, with a proactive area-based management tool to support informed decision-making that balances resource development with conservation. Regional environmental management plans also provide the Authority with a clear and consistent mechanism to identify particular areas thought to be representative of the full range of habitats, biodiversity and ecosystem structures and functions within the relevant management area, and provide those areas with appropriate levels of protection, thus helping the Authority to meet internationally agreed targets, such as Aichi Biodiversity Target 11.

6. In the context of the regional environmental management plan for the Clarion-Clipperton Zone, for example, a network of nine areas of particular environmental interest was identified on the basis of robust scientific criteria adopted through a collaborative process involving relevant stakeholders. Such networks and other area-based management tools identified in the context of regional plans have great potential to contribute to the effective conservation and management of biodiversity in marine areas beyond national jurisdiction and to help to build the resilience of deep-sea benthic ecosystems to the impacts of climate change on the ocean. Regional environmental management plans will also contribute materially to the implementation of Sustainable Development Goal 14, namely to "conserve and sustainably use the oceans, seas and marine resources for sustainable development", including, for example, by conserving at least 10 per cent of coastal and marine biodiversity (target 14.5). In addition, those areas may serve as scientific reference areas for monitoring natural variability and long-term change in the marine environment, which will be particularly important for enabling the Authority to carry out its responsibility to manage the effects of mining activities. Regional environmental management plans will also provide an important framework to guide

[2] See resolutions 69/245, para. 51, 70/235, para. 60, and 72/73, para. 71.

[3] See International Seabed Authority, *Towards an ISA Environmental Management Strategy for the Area: ISA Technical Study No. 17* (Kingston, 2017).

contractors and researchers in the collection and compilation of the environmental data needed to manage deep seabed mining and other related activities in the marine environment.

III. Development of regional environmental management plans and challenges for the Authority

7. The development and implementation of regional environmental management plans in the Area are part of the Authority's policy framework for environmental management. These activities require a collaborative and transparent approach, including the compilation and analysis of available data from multiple sources, as well as consultation with recognized experts from the international scientific community, contractors and relevant international organizations. Considering the unique jurisdiction of the Authority and the status of the Area and its resources as the common heritage of mankind, it is essential that such processes facilitate full participation by developing countries. In the case of the regional environmental management plan for the Clarion-Clipperton Zone, initial scientific work had been supported by the J. M. Kaplan Fund and the Pew Charitable Trusts before the process was brought under the auspices of the Authority. The plan was then developed through several international expert workshops convened by the Authority and subsequent consideration by the Commission.

8. In the report of the Secretary-General to the Council issued in 2017, it was noted that the Commission and the Secretary-General had taken note of current external initiatives to develop a scientific basis for an environmental management plan in the Atlantic Ocean, and that they intended to hold discussions with relevant stakeholders on how the outcomes of such initiatives might help to advance the work of the Authority. The Secretary-General also welcomed the interest of the China Ocean Mineral Resources Research and Development Association (COMRA) in pursuing a cooperative effort with other contractors and stakeholders to develop an environmental management plan for the cobalt-rich ferromanganese crust zones in the Pacific Ocean. Further discussion of this initiative will take place in January 2018 and will be reported on to the Council in due course. While external scientific initiatives are to be welcomed, it is considered important, given the mandate and role of the Authority, including in relation to the conduct of marine scientific research in the Area, that regional environmental management plans be developed under the auspices of the Authority, in a transparent manner, and with the full engagement of the relevant organs of the Authority.

9. Unfortunately, this also presents certain challenges for the Authority. The single greatest challenge at present is a lack of specific funding within the financial period 2017–2018 to support the development and implementation of regional environmental management plans. Resources will be needed to support workshops, data compilation and scientific analyses and, importantly, to finance the participation of developing countries in the process. In due course, it will also be necessary to secure funding for long-term independent monitoring programmes to ensure the effectiveness of areas of particular environmental interest.

10. A key aim for the secretariat will be to expand the breadth and depth of its strategic partnerships with relevant organizations and researchers, including exploring opportunities for new partnerships. In this regard, the Authority's database will play a critical role as the permanent and authoritative host for data relating to the Area, thus creating a data archive that is available to present and future generations. Initiatives currently being undertaken by the secretariat include cooperation and collaboration with the University of Hawaii to improve the assessment of essential

ecological functions of the deep sea oceans through long-term underwater oceanographic observatories in the Area,[4] and a joint effort with contractors to enhance knowledge of the status of deep sea marine biodiversity through the creation of online taxonomic atlases.[5]

11. Contractors also have a critical role to play in the development of regional environmental management plans, given their contractual obligation to undertake environmental baseline studies, which makes them the primary providers of environmental data. This important contribution has been noted by the Council, which stated that the Authority needed all contractors to collect samples consistently and to fully report environmental data to support the development of regional environmental management plans (see ISBA/23/C/18, para. 13). During the twenty-third session of the Authority, the Commission also encouraged the emerging trend of collaboration between contractors, which has extended to environmental surveys and data collection, potentially enabling an improved regional understanding of environmental patterns. In that regard, the Commission noted improved taxonomic standardization, collaboration between contractors, linkages between contractors and international research programmes, sampling conducted in areas of particular environmental interest as well as contract areas, and several joint contractor voyages in recent years.

IV. Short-term strategy and recommendations

12. In the light of such constraints and considering the current status of exploration in the Area, the priority areas for development of regional environmental management plans in the Area have been identified on a preliminary basis as the Mid-Atlantic Ridge,[6] the Indian Ocean triple junction ridge and nodule-bearing province,[7] as well as the North-west Pacific and South Atlantic for seamounts.[8]

13. As a first step, it is proposed to convene an international workshop in the first quarter of 2018 in Kingston in order to consider an appropriate methodology for the development of regional environmental management plans in all parts of the Area where there are contracts for exploration for polymetallic sulphides. The workshop participants would be able to review the status of existing data and scientific initiatives and make recommendations for a process for the development of such plans under the auspices of the Authority.

14. As noted in paragraph 8 above, discussions are ongoing with COMRA regarding an initiative to launch a cooperative process to develop an environmental management plan for the cobalt-rich ferromanganese crust zones in the Pacific Ocean. During the

[4] See #OceanAction17746: Improving the assessment of essential ecological functions of the deep sea oceans through long-term underwater oceanographic observatories in the Area. Available from https://oceanconference.un.org/commitments/?id=17746.

[5] See #OceanAction17776: Enhancing deep sea marine biodiversity assessment through the creation of online taxonomic atlases linked to deep sea mining activities in the Area. Available from https://oceanconference.un.org/commitments/?id=17776.

[6] On the Mid-Atlantic Ridge, contracts for exploration for polymetallic sulphides have been signed with the Government of the Russian Federation, Institut français de recherche pour l'exploitation de la mer and the Government of Poland.

[7] At the triple junction ridge, contracts for exploration for polymetallic sulphides have been signed with the Federal Institute for Geosciences and Natural Resources of Germany, and the Government of India. The Government of India holds a contract for exploration for polymetallic nodules in the Central Indian Ocean Basin.

[8] In the Northwest Pacific, contracts for exploration for cobalt-rich ferromanganese crusts have been signed with Japan Oil, Gas and Metals National Corporation, COMRA, the Ministry of Natural Resources and the Environment of the Russian Federation and the Government of the Republic of Korea. Companhia de Pesquisa de Recursos Minerais (sponsored by Brazil) is a contractor for exploration for cobalt-rich ferromanganese crusts in the South Atlantic.

second half of 2018, a workshop will be held to review the status of implementation of the regional environmental management plan for the Clarion-Clipperton Zone on the basis of newly available data, including data that are expected to become available early in 2018. In line with the decision of the Council (see ISBA/23/C/18, para. 15), the secretariat will make every effort to ensure the broadest participation of all concerned States parties and other stakeholders, taking into account the extreme budgetary constraints for 2018. In this regard, additional financial and in-kind contributions to support this process would be welcomed.

15. The Council is invited to take note of the present report, including the proposed programme of workshops for 2018 aimed at developing a more coherent strategy for the development of regional environmental management plans.

16. It should be noted that, in order to move this strategy forward, significant investment will be required to support the compilation of available data, scientific analyses and the identification of data gaps, capacity-building and the participation of developing countries in a programme of regional workshops. Support for those elements will be factored into the proposals for the budget of the Authority for the financial period 2019–2020.

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Report of the Secretary-General on the implementation of the decision of the Council in 2017 relating to the summary report of the Chair of the Legal and Technical Commission

Information relating to compliance by contractors with plans of work for exploration

Report of the Secretary-General

I. Introduction

1. In paragraph 12 of its decision ISBA/23/C/18, dated 15 August 2017, the Council requested the Secretariat and/or the Legal and Technical Commission to provide further details on cases of non-compliance in circumstances in which the relevant contractor had not complied with a specific request in a letter received from the Secretary-General, including details regarding the relevant contractor, details with respect to repeated instances of non-compliance and recommendations to ensure compliance in the future, to enable the Council to discharge its functions under article 162, paragraph 2, of the United Nations Convention on the Law of the Sea.

2. That decision was taken in response to the report of the Chair of the Legal and Technical Commission on the work of the Commission in 2017, in which it was noted that there had been some cases of non-compliance with regard to reporting requirements (ISBA/23/C/13, sect. D, paras. 15 (c–h)).

3. The purpose of the present report is to provide the Council with relevant background information on the issue of monitoring compliance with plans of work for exploration, including a review of the relevant rules, regulations and procedures of the Authority, and the related responsibilities of the Council, the Legal and Technical Commission and the secretariat. Recommendations are made with a view to improving the Council's ability to discharge its functions under article 162, paragraph 2, of the Convention.

* ISBA/24/C/L.1.

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II. Monitoring compliance

4. Under article 162, paragraph 2 (l), of the Convention, the Council shall exercise control over activities in the Area in accordance with article 153, paragraph 4, of the Convention and the rules, regulations and procedures of the Authority. Under article 153, paragraph 4, the Authority is required to exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of part XI of the Convention and the annexes relating thereto, and the rules, regulations and procedures of the Authority, and the approved plans of work.

5. Monitoring compliance with plans of work for exploration approved in the form of contracts is also one of the functions of the Authority pursuant to section 1, paragraph 5 (c), of the annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (1994 Agreement). At present, the primary monitoring mechanisms available to the Authority are the annual reports submitted by contractors pursuant to section 10 of the standard clauses for exploration contracts and the periodic reviews of the plans of work for exploration under section 4.4 of the standard clauses. In due time, the Council will be required to establish an appropriate inspection mechanism pursuant to article 162, paragraph 2 (z), of the Convention. Although such an inspection mechanism does not exist at present, it is expected that the establishment thereof will be addressed in the context of the exploitation regulations.

6. The plan of work for exploration is the fundamental document by which a contractor sets out the objectives of its proposed exploration programme. Pursuant to the regulations on prospecting and exploration, the plan of work for exploration comprises a general description and a schedule of the proposed exploration programme, including the programme of activities for the immediate five-year period, as well as a description of a programme for oceanographic and environmental baseline studies, taking into account any recommendations issued by the Commission, a preliminary environmental impact assessment of the proposed exploration activities and a schedule of expected yearly expenditure in respect of the programme of activities. Upon approval of the plan of work by the Council, the programme of activities for the immediate five-year period becomes schedule 2 of the contract for exploration. Under the contract, the contractor is required to submit an annual report to the Secretary-General within 90 days of the end of each calendar year covering its programme of activities in the exploration area (sect. 10.1 of the standard clauses). The report must be in the format recommended from time to time by the Commission.

7. Under sections 4.1 and 4.2 of the standard clauses, the contractor is required to adhere to the time schedule stipulated in its programme of activities and to spend in each contract year no less than the amount specified in the programme. The programme of activities, including expenditure, may be modified by a contractor with the consent of the Authority, insofar as any changes may be necessary and prudent in accordance with good mining industry practice, taking into account the market conditions for the constituent metals and other relevant global economic conditions.

8. In accordance with section 4.4 of the standard clauses, the contractor and the Secretary-General shall jointly undertake a review of the implementation of the plan of work for exploration. The Secretary-General may require the contractor to submit such additional data and information as may be necessary for the purposes of the review. Following the review, the contractor is required to make any necessary adjustments to its plan of work and to indicate its programme of activities for the following five years, including a revised schedule of expected yearly expenditure. Schedule 2 of the contract is then adjusted accordingly.

9. In carrying out its programme of activities, the contractor must implement, as far as reasonably practicable, any recommendations that may be issued from time to time by the Commission. The ability of the contractor to implement such recommendations, however, will primarily be linked to the specific programme of activities to which the contractor has committed itself under schedule 2 of the contract. Environmental baseline data, for example, would be collected as exploration activities progress and develop (sect. 5.2 of the standard clauses).

III. Role of the organs of the Authority

10. The various organs of the Authority have specific and clearly defined roles and responsibilities in relation to monitoring compliance with plans of work for exploration, which are derived from the Convention, the 1994 Agreement, the regulations and the standard clauses for exploration contracts.

11. The responsibilities of the Secretary-General are to:

(a) Review annual reports of contractors and require contractors to submit additional data and information as necessary (sect. 10 of the standard clauses);

(b) Submit data and information from environmental monitoring programmes to the Commission for consideration pursuant to article 165, paragraph 2 (d), of the Convention;

(c) Agree on adjustments to the programme of activities under schedule 2 of the contract (sect. 4.3 of the standard clauses);

(d) Jointly undertake a periodic (five-year) review of the implementation of the plan of work for exploration and agree on a revised schedule 2 (sect. 4.4 of the standard clauses);

(e) Inspect vessels and installations (sect. 14.2 of the standard clauses), and provide relevant information to the contractor and sponsoring State(s) arising from the inspection reports (sect. 14.7 of the standard clauses);

(f) Report incidents giving rise to emergency orders and take immediate temporary measures (regulation 33);[1]

(g) Notify member States of the termination or change of sponsorship (regulation 29).

12. The functions of the Legal and Technical Commission are set out in article 165, paragraph 2, of the Convention and are closely related to the functions of the Council under article 162. The system is designed to ensure that, in making decisions on important issues, the Council acts on the basis of the best available scientific and legal advice. The obligations placed on the Commission are mainly of an advisory or recommendatory nature and fall into the following four broad functional categories:

(a) Reviewing and making recommendations on plans of work for exploration (art. 165, para. 2 (b));

(b) Supervising activities in the Area (art. 165, paras. 2 (a, c, i, j, k and m));

(c) Formulating and reviewing rules, regulations and procedures (art. 165, paras. 2 (f and g));

[1] For the purposes of the present report, reference is made to the regulations on prospecting and exploration for polymetallic nodules in the Area (ISBA/19/C/17, annex).

(d) Assessing the environmental implications of activities in the Area (art. 165, paras. 2 (d, e, h and l).

13. Two of the general functions of the Commission under article 165 are directly related to the implementation of plans of work for exploration, namely, the responsibilities, under article 165, paragraph 2 (c), to supervise, upon the request of the Council, activities in the Area and, under article 165, paragraph 2 (d), to prepare assessments of the environmental implications of activities in the Area.

14. Consistent with article 165, paragraph 2, the regulations empower the Commission to issue recommendations of a technical or administrative nature for the guidance of contractors to assist them in the implementation of the rules, regulations and procedures of the Authority. Under the standard clauses, the contractor is required to observe those recommendations as far as reasonably practicable in carrying out their programmes of activities.

15. In order to enable the Commission to carry out its responsibility to prepare assessments of the environmental implications of activities in the Area pursuant to article 165, paragraph 2 (d), and make appropriate recommendations to the Council on the protection of the marine environment, data and information from environmental monitoring programmes submitted by contractors must be transmitted by the Secretary-General to the Commission (regulation 32, para. 2).

16. The Commission must also consider the reports of the Secretary-General on the periodic reviews of the implementation of plans of work for exploration (regulation 28, para. 3).

17. The functions of the Council are to:

(a) Approve plans of work in accordance with paragraph 11 (a) in section 3 of the annex to the 1994 Agreement;

(b) Consider the reports of the Secretary-General on the periodic reviews of the implementation of plans of work for exploration (regulation 28, para. 3);

(c) Invite the attention of the Assembly of the Authority to cases of non-compliance (art. 162, para. 2 (a));

(d) Exercise control over activities in the Area in accordance with article 153, paragraph 4, and the rules, regulations and procedures of the Authority (art. 162, para. 2 (l));

(e) Institute proceedings on behalf of the Authority before the Seabed Disputes Chamber in cases of non-compliance (art. 162, para. 2 (u));

(f) Establish appropriate mechanisms for directing and supervising a group of inspectors who shall inspect activities in the Area to determine whether part XI of the Convention, the rules, regulations and procedures of the Authority and the terms and conditions of any contract with the Authority are being complied with (art. 162, para. 2 (z));

(g) Suspend or terminate contracts if, in spite of written warnings from the Authority, a contractor has conducted its activities in such a way as to result in serious persistent and wilful violations of the fundamental terms of the contract, part XI of the Convention, the 1994 Agreement and the rules, regulations and procedures of the Authority;

(h) Alternatively, or in the event of lesser violations, impose monetary penalties upon a contractor proportionate to the seriousness of the violation.

IV. Consequences of non-compliance

18. Non-compliance denotes a failure or refusal to comply with a regulatory requirement and must be distinguished from inadequate or incomplete performance against an approved plan of work. Not every case of inadequate or incomplete implementation of a plan of work amounts to non-compliance.

19. Depending on the gravity of the failure or refusal, non-compliance may have serious consequences for contractors. For example, under section 21 of the standard clauses, the Council may suspend or terminate a contract or impose monetary penalties, as described in paragraphs 17 (g and h) above. In specified circumstances, outlined in regulation 24, non-compliance may lead to the withdrawal of the preference and priority accorded to contractors for exploration among applicants submitting plans of work for exploitation of the same area and resources. To date, no enforcement action has been taken by the Council with respect to any contractor. No written warnings have been issued, and no monetary penalties have been imposed.

V. Cases of non-compliance noted by the Legal and Technical Commission in 2017

20. Based on the review of annual reports by the Commission, the issues referred to as non-compliance in the report of the Chair of the Commission may be categorized as follows:

(a) The failure to submit annual reports on time;

(b) The failure to follow recommended reporting formats and methodologies, including the failure to use reporting templates as recommended by the Commission;

(c) Reported delays in advancing activities under the plan of work.

21. In addition, there is a general concern that, in many cases, contractors' actual expenditure is lower than planned expenditure.[2]

VI. Discussion

22. A preliminary review of the issues referred to in paragraphs 20 and 21 above revealed that there is some confusion with regard to the difference between the monitoring of compliance against a plan of work, in the sense of a failure or refusal to comply with a regulatory requirement, and the monitoring of performance against the programme of activities. In view of the potential consequences of non-compliance (outlined in section IV above), it is important that the difference between those activities be well articulated and that the process for monitoring compliance and the responsibilities of the various organs of the Authority in relation thereto be clearly understood.

23. The annual reporting process and the quinquennial periodic review undertaken by the Secretary-General serve as important monitoring tools. They facilitate the measurement of the progress of the exploration work carried out on an annual basis against a contractor's approved plan of work, including its programme of activities, and serve to highlight proposed adjustments to that programme. The annual reporting process also provides the Authority with much needed data and information, for

[2] For 2016, reported expenditure was lower than planned expenditure in 12 cases. Percentages varied from 3 to 99 per cent. In four cases, expenditure was not reported in the format requested by the Commission.

example, to evaluate, analyse and assess the environmental effects of exploration activities, and to help the Authority to formulate relevant rules, regulations and procedures concerning the protection of the marine environment and safety. This is particularly important in connection with the data and information made available to the Commission to facilitate the fulfilment of its obligations under article 165, paragraph 2, of the Convention to provide guidance and recommendations to the Council.

24. Certain deficiencies in the current reporting process were highlighted in the final report on the periodic review of the International Seabed Authority pursuant to article 154 of the Convention, together with comments by the Secretary-General. Among the measures taken to date to improve efficiency are the establishment of a dedicated contract management unit to streamline internal processes and improve the flow of communication between contractors and the Authority, and a regular annual meeting of contractors at which issues of mutual concern can be discussed. The launch of the Authority's new database, scheduled for 2018, is expected to improve significantly the flow of data and information among contractors, the Secretary-General and the Commission. The new database will also result in greater transparency, with secure access to confidential data for authorized users, and an intuitive and informative website that includes a geographic information system for public access to non-confidential data and information. In addition, external visibility of the respective programmes of activities of contractors would also contribute to greater transparency and facilitate greater collaboration and cooperation among contractors.

25. A careful review of the relevant provisions of the Convention and the regulations revealed a clear separation of the functions in the organs of the Authority between licensing (approving plans of work in the form of contracts) and subsequent compliance with and enforcement of such contracts. For example, the function of directing and supervising an inspectorate, as well as taking enforcement action, rests exclusively with the Council. The day-to-day responsibility for managing the implementation of plans of work for exploration and for reporting any instances of non-compliance lies with the Secretary-General, who exercises the powers and functions allocated to that position in a manner consistent with the Convention and the regulations. An inherent conflict of interest exists when the body that approves contracts for exploration and the financial terms thereof is the same body that is responsible for ensuring compliance.

26. In terms of distinguishing non-compliance from inadequate or incomplete performance against an approved plan of work, a more effective validation process is needed to determine whether a matter identified as potential non-compliance is in fact a case of non-compliance with the regulations. Improvements to the current process are ongoing, but a clearer understanding as to why certain reporting requirements recommended by the Commission have not been met or fulfilled would improve the Authority's understanding of the programmes and timelines of contractors.

27. The Authority is in a transitional phase from managing and administering contracts for exploration activities in the Area, including the gathering of geological and environmental data, to its role as a future regulator of mining activities in the Area. One of the key principles of good international governance is transparency. In that regard, the current working draft of the exploitation regulations recognizes an exploitation contract, including the activities carried out thereunder, to be a public document, except for confidential information.

VII. Recommendations

28. The Council is invited to:

(a) Take note of the matters contained in the present report and consider requesting contractors to provide more information on the reasons for delays in implementing plans of work and for reductions in projected expenditure;

(b) Take note of the respective responsibilities of the Secretary-General, the Legal and Technical Commission and the Council in relation to the reporting of activities carried out under plans of work for exploration;

(c) Request the Secretary-General to provide an annual report to the Council identifying instances of alleged non-compliance and the regulatory action that is recommended or to be taken, including any monetary penalties to be imposed by the Council;

(d) Request the Secretary-General to include in his reports on the status of all contracts greater detail on the periodic review of implementation of plans of work for exploration in accordance with regulation 28;

(e) Request sponsoring States to provide details of any measures taken to ensure compliance under a contract for exploration, in accordance with article 139 of the Convention;

(f) Request the Secretary-General to explore with contractors the possibility of making contracts for exploration and associated programmes of activities publicly available, taking into account the confidentiality obligations under such contracts.

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Status of contracts for exploration and related matters, including information on the periodic review of the implementation of plans of work for exploration for polymetallic nodules

Status of contracts for exploration in the Area

Report of the Secretary-General

1. The present report provides updated information on the status of contracts for exploration in the Area. Contracts currently pertain to each of the three mineral resources for which the International Seabed Authority has adopted regulations on prospecting and exploration. These are polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts. The information provided herein covers the period until 31 December 2017.

2. As at 31 December 2017, 27 contracts for exploration had entered into force, of which 17 were for polymetallic nodules, 6 were for polymetallic sulphides and 4 were for cobalt-rich ferromanganese crusts. For each mineral resource, a complete list, containing the name of the contractor, the sponsoring State(s), if applicable, the general location of the exploration area and the dates of entry into force and expiry of each contract, is provided in the annex to the present document.

3. A contract for exploration for cobalt-rich ferromanganese crusts, relating to an application for approval of a plan of work for exploration submitted by the Government of the Republic of Korea, was approved by the Council at the twenty-second session, in 2016, and will be signed before the start of the twenty-fourth session. A contract with the Government of Poland for exploration for polymetallic sulphides, relating to a plan of work for exploration approved by the Council at the twenty-third session, was signed in Warsaw in October 2017 but, owing to technical reasons, had not entered into force as at 31 December 2017.

4. In respect of six applications for a five-year extension of the exploration contracts approved by the Council at the twenty-second session, extension agreements have been signed with all contractors concerned, namely Interoceanmetal Joint

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Organization, the Government of the Republic of Korea, China Ocean Mineral Resources Research and Development Association, Deep Ocean Resources Development Co. Ltd., Institut français de recherche pour l'exploitation de la mer and Yuzhmorgeologiya. Information on the adjusted expiration date of the relevant contracts is contained in the annex.

5. In respect of the application by the Government of India for a five-year extension of its exploration contract that was approved by the Council at the twenty-third session, the extension agreement is expected to be signed by the end of February 2018.

6. The Council is invited to take note of the present report.

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Annex

Status of contracts for exploration

A. Contracts for exploration for polymetallic nodules

	Contractor	*Date of entry into force*	*Sponsoring State(s)*	*General location of the exploration area*	*Date of expiry*
1	Interoceanmetal Joint Organization	29 March 2001 29 March 2016[a]	Bulgaria, Cuba, Czechia, Poland, Russian Federation, Slovakia	Clarion-Clipperton Fracture Zone	28 March 2016 28 March 2021
2	Yuzhmorgeologiya	29 March 2001 29 March 2016[a]	Russian Federation	Clarion-Clipperton Fracture Zone	28 March 2016 28 March 2021
3	Government of the Republic of Korea	27 April 2001 27 April 2016[a]	–	Clarion-Clipperton Fracture Zone	26 April 2016 26 April 2021
4	China Ocean Mineral Resources Research and Development Association	22 May 2001 22 May 2016[a]	China	Clarion-Clipperton Fracture Zone	21 May 2016 21 May 2021
5	Deep Ocean Resources Development Co. Ltd.	20 June 2001 20 June 2016[a]	Japan	Clarion-Clipperton Fracture Zone	19 June 2016 19 June 2021
6	Institut français de recherche pour l'exploitation de la mer	20 June 2001 20 June 2016[a]	France	Clarion-Clipperton Fracture Zone	19 June 2016 19 June 2021
7	Government of India	25 March 2002 25 March 2017[b]	–	Central Indian Ocean Basin	24 March 2017 24 March 2022
8	Federal Institute for Geosciences and Natural Resources	19 July 2006	Germany	Clarion-Clipperton Fracture Zone	18 July 2021
9	Nauru Ocean Resources Inc.	22 July 2011	Nauru	Clarion-Clipperton Fracture Zone (reserved area)	21 July 2026
10	Tonga Offshore Mining Limited	11 January 2012	Tonga	Clarion-Clipperton Fracture Zone (reserved area)	10 January 2027
11	Global Sea Mineral Resources NV	14 January 2013	Belgium	Clarion-Clipperton Fracture Zone	13 January 2028

	Contractor	Date of entry into force	Sponsoring State(s)	General location of the exploration area	Date of expiry
12	UK Seabed Resources Ltd.	8 February 2013	United Kingdom of Great Britain and Northern Ireland	Clarion-Clipperton Fracture Zone	7 February 2028
13	Marawa Research and Exploration Ltd.	19 January 2015	Kiribati	Clarion-Clipperton Fracture Zone (reserved area)	18 January 2030
14	Ocean Mineral Singapore Pte. Ltd.	Signed in Kingston on 15 January 2015 and in Singapore on 22 January 2015	Singapore	Clarion-Clipperton Fracture Zone (reserved area)	21 January 2030
15	UK Seabed Resources Ltd.	29 March 2016	United Kingdom	Clarion-Clipperton Fracture Zone	28 March 2031
16	Cook Islands Investment Corporation	15 July 2016	Cook Islands	Clarion-Clipperton Fracture Zone (reserved area)	14 July 2031
17	China Minmetals Corporation	12 May 2017	China	Clarion-Clipperton Fracture Zone (reserved area)	11 May 2032

[a] Five-year extension of contract granted at the twenty-second session (2016).
[b] Five-year extension of contract granted at the twenty-third session (2017).

B. Contracts for exploration for polymetallic sulphides

	Contractor	Date of entry into force	Sponsoring State(s)	General location of the exploration area	Date of expiry
1	China Ocean Mineral Resources Research and Development Association	18 November 2011	China	South-West Indian Ridge	17 November 2026
2	Government of the Russian Federation	29 October 2012	–	Mid-Atlantic Ridge	28 October 2027
3	Government of the Republic of Korea	24 June 2014	–	Central Indian Ocean	23 June 2029
4	Institut français de recherche pour l'exploitation de la mer	18 November 2014	France	Mid-Atlantic Ridge	17 November 2029
5	Federal Institute for Geosciences and Natural Resources	6 May 2015	Germany	Central Indian Ridge and South-East Indian Ridge	5 May 2030

	Contractor	*Date of entry into force*	*Sponsoring State(s)*	*General location of the exploration area*	*Date of expiry*
6	Government of India	26 September 2016	–	Indian Ocean Ridge	25 September 2031
7	Government of Poland	Not yet in force	–	Mid-Atlantic Ridge	

C. Contracts for exploration for cobalt-rich ferromanganese crusts

	Contractor	*Date of entry into force*	*Sponsoring State(s)*	*General location of the exploration area*	*Date of expiry*
1	Japan Oil, Gas and Metals National Corporation	27 January 2014	Japan	Western Pacific Ocean	26 January 2029
2	China Ocean Mineral Resources Research and Development Association	29 April 2014	China	Western Pacific Ocean	28 April 2029
3	Ministry of Natural Resources and Environment of the Russian Federation	10 March 2015	–	Magellan Mountains in the Pacific Ocean	9 March 2030
4	Companhia de Pesquisa de Recursos Minerais S.A.	9 November 2015	Brazil	Rio Grande Rise in the South Atlantic Ocean	8 November 2030
5	Government of the Republic of Korea	To be signed	–	East of the Northern Mariana Islands in the Pacific Ocean	

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Report of the Secretary-General on the implementation of the decision of the Council in 2017 relating to the summary report of the Chair of the Legal and Technical Commission

Implementation of the decision of the Council in 2017 relating to the summary report of the Chair of the Legal and Technical Commission

Report of the Secretary-General

I. Background

1. At its 230th meeting, on 14 August 2017, the Council adopted a decision relating to the report of the Chair of the Legal and Technical Commission on the work of the Commission during the twenty-third session (ISBA/23/C/18). In paragraph 20 of that decision, the Council requested the Secretary-General to provide it with an update on the implementation of the decision at the twenty-fourth session and that such an annual update remain a standing item on the agenda of the Council. The present report responds to that request by providing an interim update on the implementation of the decision of the Council as of January 2018. A supplementary report will be presented during the second part of the session of the Council, in July 2018.

II. Work on draft exploitation regulations and priority deliverables for the development of the exploitation code

2. The Council welcomed the development of a single set of draft exploitation regulations and requested that work on the regulations continue as a matter of priority. The Council also requested that the Commission's recommendations regarding the consolidated regulations, which were issued by the secretariat in August 2017 (ISBA/23/LTC/CRP.3*), and the next iteration of the draft regulations be circulated sufficiently in advance of the meetings of the Council in March 2018 to allow for in-depth consideration and discussion, and emphasized the need for openness and

* ISBA/24/C/L.1.

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transparency. Relevant developments since the twenty-third session are described below.

A. Submission by stakeholders and the draft regulations

3. Immediately following the twenty-third session, on 25 August 2017, the secretariat issued a note on the consolidated regulations mentioned in paragraph 2 above, along with a list of related questions for comment by stakeholders (ISBA/23/C/12). As at 8 January 2018, the secretariat had received 52 written submissions from stakeholders, which have been posted on the Authority's website. Those submissions will be analysed by the secretariat with a view to preparing a summary report to assist the Council and the Commission.

4. A workshop will be held in London on 12 and 13 February 2018, to be jointly hosted by the Royal Society and the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, with the objective of stimulating informal discussion among members of the Council and the Commission and experts on key policy, legal and institutional issues that need to be addressed in the development of the exploitation regulations. The outcomes of the workshop will be made available to the Council.

B. Progress made related to the priority deliverables

5. Members of the Council will recall that a workshop was held in Singapore in April 2017 with the objective of discussing a possible financial model for the exploitation of polymetallic nodules. That was the third in a series of independent workshops on a payment regime for deep seabed mining.[1] The final reports of those workshops have been considered by the Commission.

6. Following discussion in the Commission concerning the need for an independent financial model, the secretariat engaged the Massachusetts Institute of Technology to build such a model and test the underlying assumptions put forth during the payment regime workshops. As agreed, the Secretary-General requested contractors, on a voluntary basis, to provide a forecast of financial data for that purpose. Several contractors responded to that request. Those data were anonymized and transmitted to experts at the Massachusetts Institute of Technology to assist them in modelling a range of data and payment mechanisms for future consideration by the Commission and the Council. A presentation of the financial model will be made by the Massachusetts Institute of Technology to the Commission on 21 March 2018. Subsequently, a consultation paper will be issued for stakeholder comment.

7. Since September 2017, a legal working group convened by the International Law Research Programme of the Centre for International Governance Innovation in collaboration with the Commonwealth Secretariat and the Authority has been working to explore the core matters that need to be addressed to advance the definition of a liability regime in the Area. A first workshop, hosted by the Commonwealth Secretariat, was convened in September 2017 in London to prepare a workplan for

[1] Deep Seabed Mining Payment Regime Workshop, No. 1, Scripps Institute of Oceanography, University of California, held in La Jolla, United States of America, on 17 and 18 May 2016 (final report available from www.isa.org.jm/files/documents/EN/Pubs/2016/DSM-ConfRep.pdf); Deep Seabed Mining Payment Regime Workshop, No. 2, held in London, on 1 and 2 December 2016 (final report available from www.resolv.org/site-dsm/files/2016/10/DSM-PRW2-Workshop-Summary-FINAL1.pdf); Deep Seabed Mining Payment Regime Workshop, No. 3, held in Singapore, from 19 to 21 April 2017 (final report available from www.isa.org.jm/files/documents/EN/Regs/DraftExpl/DSM-PRW-3.pdf).

conducting research on key questions, including the concept of effective control and its relevance in the context of liability. Six areas were identified: (1) the purpose and scope of the regime; (2) channelling liability/effective control; (3) actionable damage; (4) procedures; (5) standards of liability; and (6) compensation mechanisms. A second workshop will be convened on 8 and 9 February 2018 with the objective of finalizing papers on the identified key questions. That preliminary work is aimed at providing the Authority with a foundational overview of the issues to make progress on the development of the liability regime applicable to the exploitation of minerals in the Area.

III. Development of regional environmental management plans for the Area

8. In paragraph 16 of its decision, the Council encouraged the Secretariat and the Commission to make progress on the development of regional environmental management plans for the Area. The Secretary-General has submitted a separate report on this matter (ISBA/24/C/3).

IV. Activities of contractors

A. Contractor training programmes

9. In paragraph 7 of its decision, the Council acknowledged the implementation of training programmes, including the allocation of new training opportunities. Since the twenty-third session, the following six contractors have provided information concerning 17 new training opportunities: the Federal Institute for Geosciences and Natural Resources (2); the Government of the Republic of Korea (4); Global Sea Mineral Resources NV (5); China Ocean Mineral Resources Research and Development Association (2); Institut français de recherche pour l'exploitation de la mer (2); and the Interoceanmetal Joint Organization (2).

10. Those opportunities have been advertised through the Authority's website and other means, and qualified candidates from developing countries will be selected by the Commission at its meetings in March 2018. Assistance provided by Member States in facilitating the nomination of qualified candidates, especially female candidates, is very helpful in matching at-sea training and internship opportunities with qualified candidates. The nomination of female candidates suitably qualified to apply for those training opportunities is strongly encouraged, given that one of the seven voluntary commitments made by the Authority in 2017 at the United Nations Conference to Support the Implementation of Sustainable Development Goal 14 was to enhance the role of women in marine scientific research through capacity-building.

B. Cases of non-compliance

11. In paragraph 12 of its decision, the Council requested that the Secretariat and/or the Commission provide further details on cases of non-compliance in circumstances in which the relevant contractor has not complied with a specific request in a letter received from the Secretary-General, including details regarding the relevant contractor, details with respect to repeated instances of non-compliance and recommendations to ensure compliance in the future, to enable the Council to discharge its functions under article 162, paragraph 2 of the United Nations Convention on the Law of the Sea of 10 December 1982. A detailed analysis of

compliance by contractors has been prepared for consideration by the Council in March 2018 (ISBA/24/C/4).

V. Implementation of the data management strategy for the Authority

12. In paragraph 17 of its decision, the Council welcomed progress towards the full implementation of the data management strategy of the Authority by the end of October 2018. Since the twenty-third session, the Secretariat has continued to make progress with that project. In particular, a data entry assistant has been hired and all software and hardware necessary to enter into the testing phase of the database have been acquired. A detailed technical report and presentation on the progress made will be provided to the Commission in March 2018.

VI. Supporting the work of the Legal and Technical Commission

13. In paragraph 18 of its decision, the Council requested the Secretary-General to ensure that adequate time and resources continue to be made available to support the work of the Commission, in particular on priority matters.

14. In that regard, the revised schedule of meetings for 2018 and 2019 has maintained the pace of two meetings a year to allow the Commission more time, in recognition of its heavy workload. Efforts will also continue to be made to facilitate the review by the Commission of the annual reports of contractors in a timely and efficient manner.

VII. Recommendations

15. The Council is invited to take note of the present report and to provide such guidance as may be necessary.

International Seabed Authority

ISBA/24/C/7

Council

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Item 17 of the provisional agenda*
Cooperation with other relevant international organizations

Memorandum of understanding between the Asian-African Legal Consultative Organization and the International Seabed Authority

The purpose of the present memorandum of understanding is to specify the scope of cooperation between the Asian-African Legal Consultative Organization AALCO) and the International Seabed Authority, established by the United Nations Convention on the Law of the Sea, signed in Montego Bay, Jamaica, on 10 December 1982.

Whereas

AALCO is an intergovernmental, regional organization whose primary purposes, in accordance with its revised statutes, are to serve as an advisory body to its member Governments in the field of international law, provide a forum for cooperation in legal matters of common concern and establish cooperative arrangements with the United Nations, its agencies and other intergovernmental organizations with a view to promoting such cooperation in the field of international law, including wider acceptance of the Convention among the States in the Asian and African regions;

The Authority is the competent organization through which States parties to the Convention shall, in accordance with Part XI of the Convention and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, adopted on 28 July 1994 by the General Assembly of the United Nations in its resolution 48/263, organize and control activities in the Area, particularly with a view to administering the mineral resources of the Area, as defined in article 1, paragraph 1 (1) of the Convention;

The Authority seeks consultation and cooperation with, inter alia, international organizations on matters within the competence of the Authority by virtue of article 169 of the Convention;

Most parties to AALCO are members of the Authority;

* ISBA/24/C/L.1.

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The Authority and AALCO are convinced that the development and strengthening of their cooperation in matters of common interest would be of mutual benefit to both organizations, and bring about better coordination and effective implementation of their respective objectives;

AALCO and the Authority have decided:

With regard to purpose

(a) To provide a framework between AALCO and the Authority to promote cooperation in matters of mutual concern relating to their purposes and functions, including the implementation of the legal regime governing activities in the Area, in the interest of their respective member States, in particular those from the Asian and African regions;

With regard to mutual consultation and cooperation

(b) To consult, where appropriate and practical, on matters of mutual interest with a view to promoting or enhancing a better understanding and coordination of their respective activities in respect of such matters, in particular in the fields of cooperation listed in the annex to the present memorandum of understanding;

(c) To cooperate, where appropriate and practical, in the exchange of information, including reports of meetings of relevance to each other;

(d) To conduct, where appropriate, cooperative studies, workshops and seminars;

(e) To consult regularly on the scope and content of cooperation between AALCO and the Authority;

With regard to participation in meetings

(f) To invite each other's representatives to attend and participate in the meetings of their respective governing bodies as observers in accordance with the rules of procedures of such bodies;

(g) To advise each other on the steps to be taken in order to obtain the legal status permitting to be invited to the relevant meetings of each organization;

(h) To invite each other's representatives to participate in relevant meetings of experts and workshops;

With regard to exchange of information and documents

(i) That the exchange of information, publications and reports between the two organizations is subject to the requirement of confidentiality of data and information imposed upon them;

(j) That the secretariat of AALCO and the secretariat of the Authority shall also keep each other informed of current and planned activities of mutual interest for the purpose of identifying areas in which cooperation may prove desirable;

With regard to financial implications

(k) That the memorandum of understanding does not impose financial obligations on either party; that the costs and expenses resulting from the exchange of information or cooperation pursuant to the present memorandum of understanding

shall be borne by each of the parties, and that the raising of resources and their allocation to any activities carried out under the present memorandum of understanding are subject to the respective financial rules and regulations of each party;

With regard to implementation of the present memorandum of understanding

(l) The Secretary-General of AALCO and the Secretary-General of the Authority may enter into supplementary arrangements for the implementation of the present memorandum of understanding by the exchange of letters, which would become part of the memorandum of understanding;

With regard to amendments, duration, entry into force and final provisions

(m) That the present memorandum of understanding may be amended at any time by the mutual consent, expressed in writing, of the Secretary-General of AALCO and the Secretary-General of the Authority. Any such amendment shall enter into force three months following the consent by the two parties;

(n) That the present memorandum of understanding may be terminated by either signatory by giving six months' written notice to the other signatory prior to the proposed date of termination;

(o) That the present memorandum of understanding shall come into effect upon its signature by the Secretary-General of AALCO and the Secretary-General of the Authority;

(p) That nothing in the present memorandum of understanding shall bind any of the member States of AALCO jointly or severally. Similarly, the memorandum of understanding shall not bind any of the members of the Authority jointly or severally;

(q) That the present memorandum of understanding is without prejudice to agreements concluded by either signatory with other organizations and programmes;

(r) The foregoing represents the understandings reached between AALCO and the Authority upon the matters referred to herein.

In witness whereof, the undersigned have signed the present memorandum of understanding in duplicate in the Arabic, English and French languages, all originals being equally authentic.

Done in ____ this day of ____

For the Asian-African Legal Consultative Organization:
Kennedy Gastorn
Secretary-General

For the International Seabed Authority:
Michael W. Lodge
Secretary-General

Annex

Fields of cooperation

Fields of cooperation pursuant to the present memorandum of understanding include:

- Raising awareness of the United Nations Convention on the Law of the Sea and of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 in order to enhance membership of the Authority by encouraging members of AALCO that are not yet members of the Authority to consider joining the Authority
- Raising awareness of the protocol on the privileges and immunities of the International Seabed Authority and encouraging members of the Authority that are members of AALCO to become parties to the Protocol if they have not yet done so
- Raising awareness of arrears in the payment of assessed contributions from members of the Authority that are members of AALCO
- Promoting the participation of members of AALCO that are members of the Authority in the development of mineral resources in the Area, including in reserved areas
- Assisting their respective member States in the development of national legislation on mineral activities in the Area
- Assisting the Authority in promoting opportunities for training, capacity-building and internships for qualified candidates from members of AALCO, including by encouraging scientists from members of AALCO to apply for training opportunities provided and funded by contractors with the Authority
- Raising awareness of the International Seabed Authority endowment fund and the AALCO proposal for a visiting fellowship programme for senior academics and a research assistantship programme for postgraduate students from AALCO member States
- Raising awareness of the Secretary-General award for excellence in deep-sea research
- Providing assistance towards the voluntary commitments of the Authority with respect to Sustainable Development Goal 14
- Considering joint cooperation on seminars and workshops in developing regulations on the exploitation of mineral resources in the Area
- Considering joint cooperation on seminars and workshops in giving effect to the implementation of article 82 of the Convention
- Providing aid in the form of staff or provision of services, subject to the financial conditions established and agreed upon, as appropriate, by the parties
- Bringing together experts from the two organizations periodically in order to evaluate cooperation and make appropriate recommendations to improve it

International Seabed Authority ISBA/24/C/8

Council

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Statement by the President of the Council on the work of the Council during the first part of the twenty-fourth session

I. Opening of the session

1. In 2017, acting on the recommendation of the Committee established by the Assembly to carry out a periodic review of the international regime of the Area pursuant to article 154 of the United Nations Convention on the Law of the Sea, the Assembly endorsed the revised schedule of meetings for 2018 and 2019 (ISBA/23/A/13, sect. D, para. 1), owing to the increased workload of the Authority. Accordingly, the twenty-fourth session of the Council is being held in two parts. For the first part, the Council held 10 meetings from 5 to 9 March 2018, at the headquarters of the Authority in Kingston, immediately prior to the two-week session of the Legal and Technical Commission. The second part of the session will be held from 16 to 20 July 2018, after the meetings of the Commission and before the meetings of the Assembly.

II. Adoption of the agenda

2. At its 231st meeting, on 5 March 2018, the Council adopted the agenda for both parts of its twenty-fourth session (ISBA/24/C/1).

III. Election of the President and Vice-Presidents of the Council

3. At the same meeting, the Council elected Olav Myklebust (Norway) as President of the Council for the twenty-fourth session. Subsequently, following consultations among the regional groups, the Council elected the representatives of Côte d'Ivoire (African States), India (Asia-Pacific States), Poland (Eastern European States) and Brazil (Latin American and Caribbean States) as Vice-Presidents.

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IV. Report of the Secretary-General on the credentials of members of the Council

4. At the 234th meeting, on 8 March 2018, the Secretary-General informed the Council that formal credentials issued by the Heads of State or Government, Ministers for Foreign Affairs or persons authorized by the Ministers had been received from the following 22 members of the Council: Argentina, Australia, Bangladesh, Brazil, Chile, China, Côte d'Ivoire, France, Ghana, India, Italy, Jamaica, Japan, Mexico, Netherlands, Norway, Poland, Republic of Korea, Russian Federation, Singapore, Tonga and United Kingdom of Great Britain and Northern Ireland. Nine letters of credentials had also been submitted by facsimile or in the form of initialled notes verbales from ministries, embassies, permanent missions to the United Nations, permanent missions to the Authority and other government offices or authorities from Algeria, Cameroon, Canada, Germany, Morocco, Nigeria, Panama, South Africa and Uganda.

5. In accordance with rule 18 of the rules of procedure of the Council, credentials had been submitted by the European Union and the following 12 members of the Assembly who were not members of the Council but were entitled to participate in its meetings, pursuant to rule 74 of its rules of procedure, namely, Belgium, the Congo, Costa Rica, Egypt, Jordan, Kenya, Nauru, Portugal, Qatar, Senegal, Spain and Ukraine.

V. Election to fill a vacancy on the Legal and Technical Commission

6. At its 231st meeting, the Council elected Ahmed Farouk (Egypt) to fill the vacancy on the Legal and Technical Commission left by the resignation of Mahmoud Samy (Egypt), for the remainder of his term until 31 December 2021 (see ISBA/24/C/2).

VI. Status of contracts for exploration

7. At the same meeting, the Council took note of the total number of contracts for exploration granted by the Authority, which amounted to 28 (see ISBA/24/C/5) with the entry into force, on 12 February 2018, of the contract for exploration for polymetallic sulphides with the Government of Poland. It also took note of the scheduled signature of the contract for exploration for cobalt-rich ferromanganese crusts with the Government of the Republic of Korea on 27 March 2018 and that of the extension agreement with the Government of India on 15 March 2018.

VII. Implementation of the decision of the Council in 2017 relating to the summary report of the Chair of the Legal and Technical Commission

8. Also at the 231st meeting, the Secretary-General provided an interim update on the implementation of the decision of the Council relating to the summary report of the Chair of the Legal and Technical Commission during the twenty-third session (see ISBA/24/C/6). A separate report of the Secretary-General was presented, with a focus on a preliminary strategy to make progress on the development of regional environmental management plans under the auspices of the Authority for key provinces where exploration activities under contracts were being carried out

(see ISBA/24/C/3). Another report was also presented, which included details on issues relating to contractor compliance, in response to a request made in the Council decision of 2017 (see ISBA/24/C/4).

A. Development of regional environmental management plans for the Area

9. At the 231st meeting, the Council took note of the preliminary strategy, including the proposed programme of workshops for 2018, with the aim of developing a more coherent strategy for the development of regional environmental management plans (see ISBA/24/C/3). The Council noted that the preliminary strategy laid out a coherent and coordinated approach to the process. The Council agreed with the priority areas that had been identified on a preliminary basis as the Mid-Atlantic Ridge, the Indian Ocean triple junction ridge and nodule-bearing province, as well as the North-west Pacific and South Atlantic for seamounts. The Council supported the expansion by the secretariat of the breadth and depth of its strategic partnerships with relevant organizations and researchers, including exploring opportunities for new strategic partnerships, as the availability of data was the driver of the development of regional environmental management plans. The Council encouraged further outreach and consultation with the relevant stakeholders, including both contractors and research organizations, in order to collect and analyse the environmental data so that the Authority had sufficient scientific basis for proceeding with the development of regional environmental management plans for the priority areas identified. The Council expressed its appreciation for the initiative by the China Ocean Mineral Resources Research and Development Association to convene a workshop, jointly with the Authority, on the development of such a plan in the Pacific Ocean, to be held from 26 to 29 May 2018. The Council also noted the challenges faced by the Authority and the need for significant investment to compile available data and identification gaps. The Council requested the secretariat to explore ways to broadly disseminate the outcomes of the joint workshop and encouraged broad participation in the programme of workshops as a whole.

10. It was considered essential that plans be developed in a transparent manner under the auspices of the Authority, in the light of its jurisdiction under the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Council also considered the relationship between the regional environmental management plans and the draft regulations on exploitation.

B. Issues of compliance by contractors

11. At the 232nd, 234th, 235th and 236th meetings, on 5, 8 and 9 March, the Council considered a detailed analysis relating to compliance by contractors (see ISBA/24/C/4). The Council noted that that was a complex issue, which was being raised for consideration at a timely moment, when regulations on exploitation were being drafted. Several delegations commented on the necessity of striking a balance between the need for transparency and respect for confidentiality over time and in the context of the organs involved in the monitoring of compliance, such as an inspection mechanism within the secretariat, the Legal and Technical Commission, the sponsoring State(s), the Council and the Secretary-General. References were also made to the launching of the database, which would facilitate the availability of non-confidential data and information. The Council also noted the need for a more effective validation process for distinguishing non-compliance from inadequate or incomplete performance arising out of technological and site-related challenges

against an approved plan of work. The point was also made that the Authority was in a transitional phase to its new role as a future regulator of mining.

12. The Council took note of the matters relating to compliance by contractors with plans of work for exploration (see ISBA/24/C/4) and invited the Secretary-General to request contractors to provide more information on the reasons for delays in implementing plans of work and for reductions in projected expenditure.

13. The Council also took note of the respective responsibilities of the Secretary-General, the Commission and the Council in relation to the reporting of activities carried out under plans of work for exploration.

14. The Council requested the Secretary-General to report annually to the Council, identifying instances of alleged non-compliance and the regulatory action recommended or to be taken in accordance with the Convention, the Agreement and the regulations on prospecting and exploration, including any monetary penalties to be imposed by the Council, and invited the relevant sponsoring States to provide any information relating to such non-compliance and measures taken to ensure compliance under a contract for exploration, in accordance with article 139 of the Convention.

15. The Council requested the Secretary-General to include in reports on the status of all contracts greater detail on the periodic review of implementation of plans of work for exploration in accordance with the relevant provisions of the regulations on prospecting and exploration.

16. The Council also requested the Secretary-General to explore with contractors the possibility of making contracts for exploration and associated programmes of activities publicly available, taking into account the confidentiality obligations under such contracts, and to report to the Council at its twenty-fifth session.

VIII. Draft regulations on exploitation of mineral resources in the Area

17. From 6 to 9 March, the Council met in an informal setting to consider the briefing note on the submissions in relation to the draft regulations on exploitation of mineral resources in the Area (ISBA/24/C/CRP.1). The Council noted with appreciation the 55 submissions, including 18 from member States and 1 from a regional group (African States), received by the secretariat in response to the draft regulations. It also noted the questions addressed to stakeholders (see ISBA/23/C/12, annex). The Council acknowledged the contribution of the workshop on the draft regulations, hosted jointly by the United Kingdom and the Royal Society and held in London on 12 and 13 February, and the report on the outcome of that workshop.

18. During its meetings, the Council discussed six common themes arising from the responses to the draft regulations, as set out in the issue notes annexed to the briefing note. The main objective of the discussion was to provide action-oriented advice to the Legal and Technical Commission to facilitate its forthcoming deliberations on the draft regulations, to be held from 12 to 23 March 2018, on the basis of the six themes presented to the Council.

19. It was highlighted that the draft regulations must reflect the provisions of the Convention and the Agreement, including the policies relating to activities in the Area and the need to adopt the measures necessary to ensure the effective protection of the marine environment from harmful effects that might arise from such activities. In the continuing development of the draft regulations, the Council highlighted the need for a transparent and inclusive approach to the drafting of their content. Consequently,

the Commission was requested to give due consideration, in its subsequent reports, to the responses of member States and other stakeholders to the draft regulations and to outline the rationale for any amendment or modification to the draft text.

20. The Commission was requested to provide, in advance of the second part of the Council session to be held in July, a working paper on the draft regulations, in the six official languages. The working paper should include:

(a) A revised and annotated set of draft exploitation regulations;

(b) A briefing note highlighting matters requiring further investigation or study;

(c) Any matters requiring the Council's direction or guidance.

21. In the light of the deliberations by the Council on the six common themes, the Commission was requested to address, to the extent possible, the following points and actions during its forthcoming meetings.

A. Issue note 1: understanding the pathway to exploitation and beyond

22. In connection with the structure, content and flow of the draft regulations, the Commission was requested:

(a) To strengthen the principle of the common heritage of mankind in operative provisions of the draft regulations and in accordance with the Convention. The principle and its implementation for the benefit of all of humanity were to be prioritized in the development of the draft regulations, including regard paid, during the application process, to how a plan of work would contribute to the implementation of the principle;

(b) To examine the interaction and cohesion between the workflows of the exploration regulations and the draft exploitation regulations, in particular by:

(i) Identifying the necessary requirements in the exploration phase;

(ii) Assessing whether information flowing from the exploration regulations and contracts would allow for the proper development of documentation needed for an application for a plan of work for exploitation;

(iii) Re-examining the definition of "exploitation" in the draft regulations (which differs from that given in the exploration regulations);

(iv) Determining how exploration activities under an exploitation contract would be regulated;

(c) To review the relevant draft regulations reflected in attachment 2 to issue note I in annex I of the briefing note and consider any further regulatory provisions required to cover the respective exploitation process and phases;

(d) To identify any further elaboration required under guide lines or procedures to ensure that standards could evolve into good industry practices, from the commercial and environmental perspectives;

(e) To consider the concept of "best available technology", its incorporation into the draft regulations and ways to foster its adoption and development;

(f) To ensure that regulatory provisions were technologically, scientifically and environmentally viable;

(g) To consider the commercial viability of the regulatory provisions;

(h) To consider a progressive reporting and auditing mechanism that would cover the relevant stages of the exploitation contract, not only whether there has been a change of circumstances in the marine environment, while reflecting a precautionary approach;

(i) To formulate an update and review mechanism for the financing plan (annex III to the draft regulations) to ensure continued financial capability under an exploitation contract;

(j) To collaborate with the Finance Committee and make recommendations to the Council on the respective roles and responsibilities of the Commission and the Committee in order to facilitate cooperation in the development of the draft regulations, in particular the payment mechanism and, more specifically, administrative fees, and the development of equitable sharing criteria, which is on the agenda of the Committee for consideration at its meetings in July 2018. A summary report of the discussions held between the Commission and the Committee was to be provided to the Council, including a work programme for the development of the payment mechanism (including administration and other fees) and of the equitable sharing criteria;

(k) To provide the Council with a more detailed flowchart to facilitate understanding of the regulatory processes and workflows;

(l) To consider the requirement for resource-specific provisions in the draft regulations;

(m) To examine the approaches taken to the draft regulations with regard to the balance between certainty and predictability, as well as flexibility and adaptability;

(n) To discuss, together with the Secretary-General, the need to strengthen institutional resources and expertise to implement the regulations;

(o) With regard to the structure of the draft regulations and specific regulatory provisions:

(i) To re-examine the structure and flow of the parts (for example, the current part XI might be placed after part IV and the current part X after part VII);

(ii) To ensure that the appropriate balance of a contractor's rights and obligations was properly reflected in the draft regulations;

(iii) To ensure that draft regulation 7 (4) (d) was clear in relation to the health and safety of crew and third parties alike who might be directly affected by the proposed activities;

(iv) To examine the rationale and objectives for the performance guarantee (for example, the terms of closure and the content of a closure plan);

(v) To ensure that articles 142 and 147 of the Convention were properly reflected in the draft regulations;

(vi) To examine ways and means to pay reasonable regard to other activities in the marine environment, such as navigation, the laying of submarine cables and pipelines, fishing and scientific research;

(vii) To clarify the definitions of "contract area" and "mining area";

(viii) To reconsider the basis for an administrative review mechanism in the light of the existing dispute settlement mechanisms set out in the Convention;

(ix) To review all timelines and deadlines across the draft regulations, in particular the need for certainty in the consideration and assessment of a plan of work, including the necessary consultations;

(x) To clarify insurance requirements under draft regulation 27;

(xi) To elaborate on the categories of monetary penalties in appendix III to the draft regulations.

B. Issue note 2: payment mechanism

23. Discussion in the Council on the issue of a fair and equitable payment mechanism was facilitated by a presentation by the Director of the Materials Systems Laboratory of the Massachusetts Institute of Technology, Richard Roth, on the economics of seabed mining for polymetallic nodules. The Council understood that Mr. Roth would make a presentation to the Commission on 21 March 2018.

24. The Council noted the objectives and principles relating to the development of financial terms and of a system of payments under the Convention (annex III, art. 13) and the Implementation Agreement (annex, sect. 8), respectively, and requested the Commission to keep such objectives and principles under consideration as a model to evaluate the payment mechanism when it was developed.

25. In connection with the Commission's forthcoming meeting with Mr. Roth together with the secretariat, the following areas were highlighted by the Commission for further exploration and investigation, in connection with the development of the models created by the Institute to evaluate the payment mechanism for the Authority by assessing the underlying assumptions and data in the cost, price forecast and cash flow components of the model, specifically:

(a) Revenue forecasts and metal pricing, in particular assumptions for manganese pricing (relevant purity and grade);

(b) Production and downtime assumptions;

(c) Insurance assumptions and impact on risk mitigation;

(d) Constituent metals used for revenue forecasts;

(e) Data assumptions for pre-feasibility, feasibility and other costs;

(f) Environmental cost assumptions;

(g) Assumptions made for currency fluctuations;

(h) Factoring in mining efficiencies;

(i) Specific considerations for other resource categories and the flexibility of the model to reflect such considerations;

(j) Mechanisms to compensate the common heritage of mankind, which should include royalty and profit share and model different scenarios, and the principles and timing of review under the model;

(k) The principles of no artificial advantage or disadvantage, namely, how to achieve neutrality;

(l) Understanding the impact of the Authority as part of the cost structure for contractors;

(m) Supporting the Massachusetts Institute of Technology in collating data and information for the model;

(n) Incentive mechanisms, such as the use of funds, for reducing environmental impacts.

26. The Commission was also requested, in performing the functions of the Economic Planning Commission, to examine the requirements under the Convention and the Implementation Agreement with regard to protecting developing countries from adverse effects resulting from exploitation activities in the Area and to make the necessary recommendations to the Council on how to address the issue. The Commission was further requested, together with the secretariat, to initiate a study of the potential impact of mineral production from the Area, in accordance with section 1, paragraph 5 (e), of the annex to the Agreement, and to provide the Council with an update on the timing of the study during the second part of its session, in July 2018.

27. While it was noted that part VII of the draft regulations, on financial terms of an exploitation contract, was a work in progress, the Commission was requested:

(a) To clarify the meaning of "special circumstances" in draft regulation 60 (4);

(b) To reflect on a standard for the measuring and valuation equipment required for the purposes of draft regulation 65;

(c) To consider the use of other internationally accepted accounting principles under draft regulations 39 (1) and 64 (2);

(d) To re-examine the basis of the calculation of an annual fixed fee under draft regulation 49, possibly on the active mining area and taking into account abundance and grade;

(e) To examine definitions, including "commercial production", "relevant mineral", "monetary value", "financial capability", "resources" and "reserves".

28. The Commission was requested to investigate recent changes to and developments in extractive industry fiscal regimes, in order to draw upon best current practices.

29. The Commission and the Secretary-General were requested to make the arrangements necessary for continued engagement with and the receipt of deliverables from the Massachusetts Institute of Technology.

30. The Commission was also requested to explore options in respect of the payment mechanism and make recommendations to the Council on which options would best help to achieve the objectives and principles set out in the Convention and the Agreement.

C. Issue note 3: the role of the sponsoring States

31. The Commission was requested to formulate a matrix of duties and responsibilities of the Authority and the sponsoring States and to consider extending that, where practicable, to reflect the roles of the flag States and the coastal States.

32. As to the draft regulations, it was suggested that the Commission might wish to address the following points:

(a) The review of the contractor's track record prior to a change of sponsoring State;

(b) Issues relating to multiple sponsoring States;

(c) Provisions on cooperation between the Authority and the sponsoring State(s), identification of which organ of the Authority a sponsoring State was to communicate with, the form of such communication and the points of contact;

(d) The adoption and implementation of the uniform application of the rules, regulations and procedures of the Authority under article 17 (1) of annex III to the Convention, to ensure a level playing field for contractors.

33. The Commission was asked to take the following action with regard to the relevant regulatory provisions:

(a) Re-examine the rationale for a 12-month period under draft regulation 14, compared with a 6-month period under the exploration regulations;

(b) Clarify that a change of sponsoring State must respect the effective control requirements (draft regulation 14);

(c) Consider the deletion of wording in draft regulation 15 (1) reading "which is not to be unreasonably withheld or delayed", given that the decision to sponsor was a sovereign act of a State;

(d) Assess whether draft regulation 15 (4) should refer to the registration of securities and guarantees;

(e) Specify which organ of the Authority should issue consent (draft regulation 16 (1));

(f) Clarify the roles of the Authority and sponsoring State(s) in draft regulation 17;

(g) Consider the issue of international responsibility (draft regulation 91).

34. The Council supported the convening of a workshop on the roles and responsibilities of sponsoring States, flag States, coastal States and port States in monitoring and enforcement measures to clarify those issues in the draft regulations. The Council emphasized the need to hold workshops in a transparent and open manner.

D. Issue note 4: role and legal status of standards, recommendations and guidelines

35. It was noted that there was a need for the development of an appropriate mix of performance and procedure-related standards, including an inclusive and transparent process for their development, and a need to re-examine the legal status of the Commission's recommendations for the guidance of contractors under the exploitation regime.

36. The Commission was requested to consider the development of relevant guidelines under a consensus-based approach.

37. The Commission was asked to consider a mechanism under the draft regulations to strike a balance between flexibility, adaptability and stability in the regulatory framework in the review, modification and adoption of standards and guidelines.

38. The Commission was invited to formulate a suggested process, which should be inclusive and transparent, for the development of the standards and guidelines, together with an indicative list of such standards and guidelines by subject matter.

39. The Commission should consider the timing of a workshop dedicated to the development of standards and guidelines and consider the legal nature of such standards and guidelines.

E. Issue note 5: broader environmental policy and the regulations

40. The Commission was requested:

(a) To bear in mind the importance of environmental protection, recognized as a core part of the draft regulations;

(b) To ensure that a precautionary approach and the best available scientific evidence were adequately reflected in the regulations and accorded the appropriate weighting;

(c) To reflect on relevant content for an environmental policy framework and to make recommendations to the Council, taking into account the Authority's draft strategic plan;

(d) To assess comments by member States and other stakeholders in connection with the incorporation of regional environmental management plans into the draft regulations and to make recommendations to the Council;

(e) To examine and expand, as appropriate, on the provisions under part IV of the draft regulations relating to the effective protection of the marine environment, including by:

(i) Determining the requirements for the delivery of a comprehensive environmental impact assessment, including applicable standards;

(ii) Assessing the requirements for a comprehensive environmental management and monitoring plan;

(iii) Reviewing the definitions of "interested persons", "good industry practice", "best environmental practices", "independent" and "serious harm" in the draft regulations in the light of the submissions by member States and other stakeholders;

(iv) Elaborating on the general principles under draft regulation 17 and considering their operation;

(f) To consider a specific provision regulating mining discharges in accordance with applicable standards, keeping in mind the technological realities and challenges, including possible alignment with existing relevant legal instruments;

(g) To consider frequency in the reporting and review of environmental performance;

(h) To underline the importance of making data available to underpin environmental protection through informed decision-making.

F. Issue note 6: roles of the Council, the Secretary-General and the Legal and Technical Commission in implementing the regulations

41. The Commission was invited to provide clarification on the respective roles of the Council, the Secretary-General and, as appropriate, the Assembly and to consider specifying which body of the Authority was responsible when reference was made to the Authority.

42. The Commission was requested to review the balance of authority, in particular between the Council and the Secretary-General, taking into account the fact that the Council was the executive body of the Authority, the need for efficient decision-making, including possible provisional decision-making authority for the Secretary-General, and current provisions in the exploration regulations, for example.

IX. Approval of the memorandum of understanding between the Asian-African Legal Consultative Organization and the International Seabed Authority

43. At its 232nd meeting, on 5 March 2018, the Council approved the memorandum of understanding between the Asian-African Legal Consultative Organization and the International Seabed Authority, in which the scope of cooperation between the two organizations is specified (ISBA/24/C/7).

International Seabed Authority ISBA/24/C/8/Add.1

Council

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Statement by the President of the Council on the work of the Council during the second part of the twenty-fourth session

Addendum

I. Introduction

1. The second part of the twenty-fourth session of the Council took place from 16 to 20 July 2018, during which time the Council held 10 meetings.

II. Report of the Secretary-General on the credentials of members of the Council

2. At the 241st meeting of the Council, on 19 July, the Secretary-General indicated that, as at that date, credentials had been received from 32 members of the Council, as well as 28 members of the Assembly who were not members of the Council but were entitled to participate in its meetings, pursuant to rule 74 of the rules of procedure of the Council.

III. Elections to fill two vacancies on the Legal and Technical Commission

3. At its 238th meeting, on 16 July, the Council elected Martin Mainero (Argentina) to fill the vacancy on the Legal and Technical Commission left by the resignation of Andrés Sebastián Rojas (Argentina), for the remainder of his term, that is, until 31 December 2021 (see ISBA/24/C/16). At the same meeting, the Council elected Shengxiong Yang (China) to fill the vacancy on the Commission left by the resignation of Jun Wu (China) for the remainder of her term, that is, until 31 December 2021 (see ISBA/24/C/17).

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IV. Status of national legislation relating to deep seabed mining and related matters, including a comparative study of existing national legislation

4. At its 239th meeting, on 17 July, the Council considered a report of the Secretary-General on the status of national legislation relating to deep seabed mining (ISBA/24/C/13). The Council took note of the report, including the ongoing comparative study of existing national legislation conducted with a view to deriving common elements, due for completion by the end of 2018. The Council requested the Secretary-General to submit a report on the status of national legislation relating to deep seabed mining and related matters for consideration by the Council in 2019.

V. Draft regulations on the exploitation of mineral resources in the Area

5. From 17 to 20 July, the Council continued its consideration of the draft regulations on the exploitation of mineral resources in the Area, in the same informal setting as during part I of the session, in March.

6. The Council based its consideration primarily on the revised draft regulations on the exploitation of mineral resources in the Area prepared by the Commission (ISBA/24/LTC/WP.1/Rev.1), a note by the Commission identifying areas for further work and matters requiring guidance from the Council (ISBA/24/C/20) and a briefing note from the President of the Council dated 15 June.[1]

7. While noting that the draft regulations were still a work in progress, the Council commended the Commission for the considerable work that it had accomplished and encouraged it to pursue its efforts at its meetings in 2019. The Council reiterated its views that regulations on the exploitation of mineral resources should be adopted as a matter of urgency.

8. Members of the Council agreed to submit specific comments on the revised draft regulations by 30 September 2018, in order to provide further guidance to the Commission on the matters identified in its note for incorporation into the next iteration of the draft regulations. The Council requested the secretariat to prepare a compilation of those comments to assist the work of the Commission at its meetings in 2019. The Council decided to resume its consideration of the revised draft regulations during the first part of its 2019 session.

9. On 17 July, the Chair of the Legal and Technical Commission reported to the Council on the outcomes of the first joint meeting of the Commission and the Finance Committee, held in response to a request made by the Council. In her report, the Chair outlined areas of collaboration identified in document ISBA/24/C/10 and the methodology for collaboration. Mention was also made of preliminary discussions on the Legal and Technical Commission acting as the Economic Planning Commission. The Council took note of the oral report and welcomed this timely initiative.

10. The Council provided general comments on the first eight parts of the draft regulations and on areas on which the Commission had requested guidance from the Council. A summary of those comments is contained in annex I to the present report. The Council also referred to the need to learn lessons from the division of the session of the Council into two parts and the time needed to reflect on revisions to the draft regulations made by the Commission immediately before the meetings of the Council.

[1] See www.isa.org.jm/files/documents/EN/24Sess/BNote.pdf.

11. On 16 July, the Council continued its discussions on a payment mechanism after a presentation by the Director of the Materials Systems Laboratory of the Massachusetts Institute of Technology, Richard Roth, entitled "Update on Financial Payment Systems: Seabed Mining for Polymetallic Nodules". Mr. Roth pointed out that baseline data came from several sources, including historical market data, publicly available price forecasts from mining industry experts and data collected from existing contractors. He explained that, given the mandate of the Authority, the model that he had developed focused on collector costs and not processing costs, and did not yet assess monitoring costs for the Authority. The presentation was followed by a question-and-answer session, during which it was specified that the model included environmental costs, such as monitoring and treating slug water, but not the valuation of potential environmental damage.

12. It was also noted that various economic models, studies and concepts had recently been prepared by members of the Authority. As a way forward to develop the payment mechanism regime, the Council agreed on a proposal made by the delegation of Germany (see annex II)

VI. Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-fourth session

13. At the 241st meeting, the Chair of the Legal and Technical Commission reported to the Council on the work of the Commission during both parts of the twenty-fourth session (see ISBA/24/C/9 and ISBA/24/C/9/Add.1).

14. The Council commended the Commission on the breadth and quality of its work. While recognizing its heavy workload and that priority had been given to the preparation of the draft regulations on the exploitation of mineral resources, the Council urged the Commission to make progress with matters referred to it by the Council. The Council also underscored the importance of the work of the Commission on the annual reports of contractors on their activities in order to identify possible shortcomings, and reaffirmed the importance of advancing environmental objectives.

15. The deliberations of the Council on the work of the Commission during the twenty-fourth session are reflected in Council decision ISBA/24/C/22.

16. In addition, the Council considered an overview of existing measures, means and actions relating to the protection and conservation of the marine environment in areas beyond national jurisdiction, which had been submitted by the delegation of the Netherlands (ISBA/24/C/15). The Council took note of the overview and requested the secretariat to update the information therein on a regular basis.

VII. Report and recommendations of the Finance Committee, budget of the International Seabed Authority for the financial period 2019–2020 and scale of assessment for contributions to the budget of the Authority

17. At its 242nd meeting, on 19 July, and 243rd and 244th meetings, on 20 July, the Council considered the report of the Finance Committee (ISBA/24/A/6–ISBA/24/C/19) and the report of the Secretary-General on the proposed budget of the Authority for the financial period 2019–2020 (ISBA/24/A/5–ISBA/24/C/11 and ISBA/24/A/5/Corr.1–ISBA/24/C/11/Corr.1).

18. The decision of the Council relating to the budget of the Authority for the financial period 2019–2020 is contained in document ISBA/24/C/21.

19. The Council expressed concerns over the status of the voluntary trust fund and stressed the importance of enabling participation from members of the Finance Committee and the Commission from developing countries in meetings of those subsidiary organs to ensure legitimate decision-making. The Council considered the options proposed by the Committee to address as a matter of urgency the shortfall in the voluntary trust fund. In line with the voluntary nature of the fund, the Council decided, as an interim solution and on a voluntary basis, to add an additional contribution to the annual overhead charge invoice to the contractors on an opt-out basis (see ISBA/24/C/21, para. 9).

20. The Council expressed its appreciation to the Governments of Argentina, China, Norway and the United Kingdom of Great Britain and Northern Ireland for their generous contributions to the voluntary trust fund.

VIII. Election of members of the Legal and Technical Commission

21. At its 243rd meeting, the Council took note of the information contained in report of the Secretary-General on the election of members of the Commission (ISBA/24/C/14). The question of the election will be included in the agenda of the Council in 2019 in view of the forthcoming election of members of the Commission in 2020. The importance of environmental expertise in the Commission was stressed.

IX. Dates of the next session

22. The first part of the twenty-fifth session of the Council will take place from 25 February to 1 March 2019.

X. Other matters

23. At its 243rd meeting, the Council considered a report of the Secretary-General on considerations relating to a proposal by the Government of Poland for a possible joint-venture operation with the Enterprise (ISBA/24/C/12). The Secretary-General also provided the Council with a progress update on the study on the operationalization of the Enterprise, which is expected to be presented for consideration at the twenty-fifth session of the Council. A statement was made by the delegation of Poland. The Council took note of the report and noted that a full proposal for a joint-venture operation with the Enterprise was also expected to feature on the agenda of the Council in 2019, requesting the Secretary-General to make any necessary arrangements in that regard.

24. At its 244th meeting, the Council took note of the suggestions for facilitating the work of the Authority submitted by the delegation of Germany (ISBA/24/C/18), which included the circulation of annotated agendas before meetings of the Council and the Assembly and the timely notification of forthcoming workshops and related meetings and timely publication of outcome reports.

25. The President of the Council closed the session on 20 July.

Annex I

Comments on the structure and flow of the revised draft regulations on the exploitation of mineral resources in the Area

I. General comments on the revised draft regulations

1. Overall, the Council was satisfied with the improvements made by the Commission to the revised draft regulations on the exploitation of mineral resources in the Area (ISBA/24/LTC/WP.1/Rev.1) with respect to the general structure and flow, and it requested the Commission to continue to improve it, including by updating the table of contents as the text evolved and reviewing the transition between exploration and exploitation, as well as adverse impacts on the economies of developing countries resulting from deep seabed mining. The Council also noted the greater emphasis put on the role of sponsoring States and flag States. The Council requested further clarification on the consultations being held, the evaluation process and responsibilities, and invited the secretariat to prepare a matrix in that regard.

II. General comments on parts I to VIII of the revised draft regulations and other matters on which the Commission had requested guidance from the Council

Part I

2. The Commission is invited to:

(a) Add a principle referring to the balance between resource exploitation and the protection of the marine environment;

(b) Elaborate on freedom of the high seas and the due regard clause;

(c) Further review the definition of serious harm, maintain in the regulations the distinction between "conserving" and "preserving" made in the United Nations Convention on the Law of the Sea (see draft regulation 2, para. 5 (a)) and clarify the provision on compliance notices (see draft regulation 4, para. 3);

(d) Review the reference to "if any" in association with regional environmental management plans in draft regulation 2, paragraph 5;

(e) Consider including consultations with nearby coastal States in the application process in the context of article 142 of the Convention (see draft regulation 4);

(f) Review the issue of compliance notices by the Secretary-General in draft regulation 4, paragraph 3;

(g) Review the issues of multiple sponsorship and effective control (see draft regulation 6);

(h) Develop, in parallel with the regulations, a list of priorities for the development of standards and guidelines (such as those in draft regulation 7, para. 3), which may need to be sequential, and of standards for mining discharges.

Part II

3. The Commission is invited to:

(a) Examine the use of the disclaimer "where applicable" in draft regulation 13, paragraph 3 (a);

(b) Consider the need to take account of regional environmental management plans in draft regulation 14;

(c) Elaborate provisions on monopolization (see draft regulations 16 and 24);

(d) Review time frames during the application process and the duration of the contract;

(e) Consider transparency issues throughout the application process;

(f) Consider elaborating on options for refusing an application;

(g) Clarify objectives, standards, thresholds and the relationship among best environmental practices, best available scientific evidence, best available techniques and good industry practices.

Part III

4. The Commission is invited to:

(a) Elaborate on adaptive management with criteria and procedures, taking into account the principle of mutual consent to contract amendments and the need for security of tenure, and review the payment of applicable fees (see draft regulation 19);

(b) Consider replacing the word "optimize" with "ensure", "manage" or "achieve" in draft regulation 29, paragraph 1;

(c) Consider replacing the word "optimal" with "sound" in draft regulation 31 and review the intent and purpose of the reference to "inefficient mining practices" in draft regulation 31, paragraph 1 (a);

(d) Review draft regulation 31, paragraph 4, in the context of the jurisdiction of the Authority;

(e) Make applicable international rules and standards function as the minimum standards to avoid the risk of less stringent national laws remaining applicable (see draft regulation 32, para. 3 (a));

(f) elaborate on the environmental performance guarantee through a transparent process and binding guidelines and clarify the language in section 9.

Part IV

5. Improvements are welcome and the Commission is invited to continue to elaborate on this part. The Commission is invited in particular to:

(a) Include references to the ecosystem principle and the polluter pays principle;

(b) Strengthen provisions relating to environmental protection, monitoring, evaluation and the closure plan to provide a robust environmental framework in the body of the text rather than in annexes, with inputs from all stakeholders;

(c) Consider making regional environmental management plans mandatory and include those plans in the overarching environmental policy and framework of the Authority and the environmental obligations of the contractors, and consider taking into account broader regulatory frameworks in the development of regional environmental management plans;

(d) Factor regional environmental management plans into environmental reports, such as environmental impact assessments, environmental impact statements and environmental management and monitoring plans, and into applications;

(e) Consider sociocultural impacts in the environmental impact assessment and in the review by the Authority of environmental impact assessments by contractors;

(f) Clarify the language in draft regulations 47 (disclaimer and references to articles 209 and 215 of the Convention) and 50;

(g) Give further consideration to the purposes of funding the environmental liability trust fund and their impact on the nature of the fund;

(h) Consider giving access to the liability environmental trust fund to coastal States affected by the potential transboundary impacts of mining;

(i) Clarify compensation mechanisms for environmental damage.

Part V

6. The Commission is invited to:

(a) Consider that modifications to environmental plans could be permitted by the Secretary-General if those modifications do not constitute a material change (see draft regulation 55);

(b) Review the period and include an independent scientific assessment, as well as a list of triggers, and consider a mechanism for reporting to the Commission, the Council and the Secretary-General (see draft regulation 56).

Part VI

7. The Commission is invited to further elaborate on the objective, assessment and review of closure plans and on their costs and effects (see draft regulation 58) and to consider making them public.

Part VII

8. The Commission is invited to:

(a) Further develop the financial payment regime, considering the written report that the Massachusetts Institute of Technology will deliver ahead of the meetings of the Council and the Commission in 2019. Several views were expressed, some delegations preferring the royalty option, while others favoured the profit-sharing option, or a combination thereof;

(b) Continue its work on the financial and payment mechanism and elaborate on incentives to contractors, including in relation to benefit-sharing and environmental objectives (see draft regulation 61);

(c) Elaborate on unpaid royalty and the issue of compliance notices (see draft regulation 77).

Part VIII

9. The Commission is invited to:

(a) Further examine the purpose, rationale (cost or service) and function of the fee and consider whether it may be set off against royalty;

(b) Ensure a clear and consistent reference to the exchange rate to be used throughout the regulations, for fees as well as royalties.

Part IX

10. With respect to the confidentiality of information, the Council expressed its satisfaction with the approach followed in the revised draft regulations, which balanced access by the public to environmental data and the protection of confidentiality of industry and business aspects.

11. A suggestion was made to remove draft regulation 87, paragraph 2, to ensure a level playing field and to clarify the use for which information was needed. Another suggestion was made to provide more weight to the independent assessment of performance reports.

Part X

12. With respect to inspection and enforcement mechanisms, the Commission is invited to:

(a) Continue its consideration of those important questions and explore appropriate remote monitoring technology and the administrative and operative costs that it entails (see draft regulation 100);

(b) Review draft regulation 101 in the light of the responsibilities of sponsoring States.

Annex II

Proposal by the delegation of Germany

1. To keep the momentum on the development of a financial model, the German delegation proposes to organize efforts in a systematic manner.

2. First, the Council should ask Mr. Roth of the Massachusetts Institute of Technology to compare and synthesize the reports and studies listed below and, on that basis, to prepare a document in which he would describe the pros and cons of the different payment models, namely, the ad valorem model, the profit-based model and a combination of both:

- The submission by the African Group on 9 July 2018 relating to the payment regime and other financial matters
- The economic model of the China Ocean Mineral Resources Research and Development Association, presented on 17 July 2018 during a side event
- The economic study by Germany on the economic benefits of commercial deep sea mining operations, of 30 September 2016
- The economic model developed by the Massachusetts Institute of Technology, as presented to the Council in its revised version on 16 July 2018

3. The German delegation would like to highlight that, in conducting such a comparative analysis and synthesis, the Institute should also take due account of the potentially diverse assumptions upon which those reports and calculations have been based.

4. Second, the Massachusetts Institute of Technology should make the results of its work public and initiate a public consultation through the website of the International Seabed Authority, inviting comments from member States, observers and all interested stakeholders. The Institute should also be asked to take due account of the comments received and compile them into its report. The consolidated document should be submitted to the Authority no later than 31 December 2018, to give member States and observers sufficient time to review the report well before the twenty-fifth session of the Council.

5. Third, the German delegation would like to ask the Council to establish an open-ended working group on the present matter. Participation in the working group should be open to all members of the Assembly, the Council, the Legal and Technical Commission and the Finance Committee, as well as to contractors and observers. The working group should be mandated to meet before the twenty-fifth session of the Council to discuss the report prepared by the Massachusetts Institute of Technology. The working group would report to the Council on the result of those discussions at the twenty-fifth session.

6. It is well known that developing a financial model is of utmost importance for the continuation of the Authority's work, as well as to give the fullest effect to the principle of the common heritage of mankind. Against this background, the delegation of Germany considers the present proposal to be both a necessary and sensible way forward.

International Seabed Authority ISBA/24/C/9

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Agenda item 12
Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-fourth session

Report of the Chair of the Legal and Technical Commission on the work of the Commission at the first part of its twenty-fourth session

I. Introduction

1. The 2018 session of the Legal and Technical Commission of the International Seabed Authority has been divided into two parts. Part I was held from 12 to 23 March, and part II will be held from 2 to 13 July.

2. On 12 March, the Commission adopted its agenda (ISBA/24/LTC/1) and elected Michelle Walker as Chair and Harald Brekke as Vice-Chair.

3. The Commission noted with satisfaction that as many as 90 per cent of its members attended part I of its 2018 session. Malcolm Clark, Elie Jarmache and Alonso Martinez Ruiz were unable to attend; however, Mr. Clark was able to contribute by email to the discussions.

II. Activities of the contractors

A. Status of contracts for exploration

4. On 12 March, the Commission took note of the report on the status of contracts signed by the Authority for exploration for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts (ISBA/24/LTC/2).

B. Status of implementation of training programmes under contracts for exploration and allocation of training opportunities

5. On the same date, the Commission was briefed on the selection of candidates for training programmes since July 2017. At the twenty-third session, in 2017, the Commission had agreed that the training subgroup would work with the secretariat

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intersessionally to identify appropriate candidates for training opportunities (ISBA/23/C/13, para. 7). During that period, 11 first-ranked and 14 alternate candidates were selected on the basis of the recommendations of the subgroup.

6. During part I of its session, the Commission was invited to select 11 additional candidates for five training programmes being offered by four contractors pursuant to their contracts for exploration with the Authority. On the basis of the recommendations of the subgroup, 10 first-ranked and 14 alternate candidates were selected by the Commission (see ISBA/24/LTC/5).

7. During the general discussion of the implementation of the training programmes, some members reiterated the importance of monitoring the impact that former trainees were having on their countries of origin, as well as the need to monitor the benefits to trainees who were receiving long-term training, for example those pursuing doctoral and master's degrees.[1]

C. Additional measures to improve efficiency in the process for reviewing annual reports

8. On 12 March, the Commission considered a report on the evaluation of annual reports of contractors and on monitoring compliance with plans of work for exploration (ISBA/24/LTC/3). The Commission took note of the report and requested the Secretary-General to provide further details and analysis on the implementation of the five-year programme of activities and to discuss with contractors the need for more clearly defined programmes of activities, reflecting the request made by the Assembly at the twenty-third session (see ISBA/23/A/13).

III. Regulatory activities of the Authority

A. Consideration and adoption of the draft regulations on the exploitation of mineral resources in the Area

9. On the same date, the Commission was briefed by the secretariat on the proposed workflow and expected outcomes for the current session in respect of the draft exploitation regulations. On 13 March, the Commission discussed the requests made by the Council, as contained in the statement by the President of the Council on the work of the Council during the first part of the twenty-fourth session (ISBA/24/C/8). The Commission set up three working groups to explore the following areas: the reinforcement of the principle of the common heritage of mankind in the operative provisions of the draft regulations; the need to protect developing countries from the adverse effects of mineral production in the Area on their economies; and the role and legal status of standards, recommendations and guidelines, including the preparation of terms of reference for a workshop dedicated to the development of standards and guidelines.

10. From 13 to 16 March, the Commission considered a number of key issues relating to the draft regulations, identified as a result of prior discussions in the Commission and stakeholder responses to the draft regulations, as well as the discussions held by the Council immediately before the meetings of the Commission. Those issues included the structure of and workflow under the draft regulations; key definitions (good industry practice, best environmental practice, serious harm and best available technology); confidentiality; the use of exploitation contracts as

[1] In accordance with the Commission's recommendation outlined in ISBA/19/LTC/14, para. 19, subsect. (C).

security; the protection of developing countries from adverse effects; performance guarantees; the concepts of "contract area", "mining area" and "interested persons"; and public consultation. The Commission also discussed other issues, including documentation requirements for applying for a plan of work, matters relating to production, termination of sponsorship and environmental scoping. The Commission requested the secretariat to consider those discussions in revising the draft regulations.

11. On 19 March, the Commission considered a proposal submitted by the working group on the terms of reference for a workshop on the development of standards and guidelines. The Commission recommended that standards and guidelines be developed separately and that a workshop on the development of standards be organized in the first half of 2019. The Commission adopted the terms of reference for an initial workshop on the development of standards and requested the secretariat to finalize those terms. It was decided that the terms of reference for a workshop on the development of guidelines would be considered during part II of the session.

12. On the same date, the Commission discussed the possibility of collaborating with the Finance Committee to facilitate cooperation in the development of the draft regulations, in particular with regard to the payment mechanism and equitable sharing criteria. The Commission agreed with the proposal made by the secretariat to hold a joint meeting with the Committee during part II of the session and requested the secretariat to make the necessary arrangements.

13. On 21 March, Richard Roth and Randolph Kirchain from the Massachusetts Institute of Technology made a presentation on the economics of seabed mining for polymetallic nodules and on the work undertaken to date on a financial model for the Authority, which included further analysis following Mr. Roth's discussion with the Council. The Commission concurred with the fundamental principles applied and the approach taken by the Institute's team to the development of the model. During its discussion with the team, the Commission highlighted areas for further consideration and analysis by the team, especially in connection with metal price forecasts and underlying cost assumptions. While acknowledging the work performed by the team in respect of a payment mechanism, the Commission considered that it was premature to make recommendations to the Council on options to best realize the objectives and principles set out in the United Nations Convention on the Law of the Sea and in the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The Commission and the secretariat discussed focus areas to be explored by the team on the basis of the relevant items in the statement by the President of the Council and noted that the Secretary-General would make the arrangements necessary for the team to continue its work. The Commission will report to the Council in July 2018 on the status of the model and possible payment options, in addition to the outcome of its joint meeting with the Finance Committee.

14. On 20 and 22 March, the Commission considered a revised and annotated version of the draft regulations, including provisions suggested by the working groups. The Commission requested the secretariat to incorporate its suggestions and comments into the text and to produce a further revised version, with the necessary comments as an attachment. The secretariat noted that the further revised draft regulations would be prepared as a working paper in the official languages for consideration by the Commission and the Council at their meetings. A briefing note would also be prepared to highlight the key matters discussed by the Commission, together with any matters requiring the Council's direction or guidance.

B. Recommendations for the guidance of contractors for the assessment of possible environmental impacts arising from the exploration for marine minerals in the Area

15. On 13 March, the Commission received a report summarizing the comments submitted by 13 contractors and several technical experts in respect of the draft revised recommendations. The Commission requested the working group on environmental matters to review those comments and prepare an annotated document for consideration by the Commission. On 22 March, the Commission discussed a working paper prepared by the working group on general comments and suggested responses, in particular on the key issues of the legal status and level of detail of the recommendations, the environmental impact assessment template and timing of submission, the design of preservation reference zones and impact reference zones, and test mining and testing of components. The Commission requested the working group to continue to consider the key issues and to submit a further revised document for consideration during part II of the session.

IV. Implementation of the data management strategy of the Authority

16. On 12 March, the Commission received an update on the implementation of the data management strategy, the first phase of which is expected to be completed by October 2018. The Commission noted with satisfaction the progress made by the secretariat since initiating the implementation of the strategy and expressed its willingness to assist the secretariat with future implementation. The Commission acknowledged the importance of migrating and loading historical data into the Authority's database. The Commission endorsed the use of proprietary software in the implementation of the database management project to ensure the long-term sustainability of the application. The Commission also emphasized the importance of developing and strengthening communications with contractors to ensure that all stakeholders were adequately represented.

17. On 22 March, the working group on data management met the data manager of the secretariat, who provided more details about the database being developed for the Authority.

V. Matters referred to the Commission by the Council

18. On 16 March, the Commission received a detailed report on the legal and policy-related aspects of the possible alignment of the Authority's regulations on prospecting and exploration with respect to the offer of an equity interest in a joint venture arrangement (ISBA/24/LTC/4). Differing legal and policy views were expressed by the members of the Commission. Considering that the priority task was the development of the exploitation regulations, and in the light of those divergent views, the Commission decided to defer consideration of the item until part II of its session.

19. On 19 March, recalling the request of the Assembly that the Commission continue to address the question of the operationalization of the Enterprise as an important matter in the light of developments with respect to deep-sea mining, the Commission considered issues relating to the operation of the Enterprise and endorsed the draft terms of reference for a study on those issues (ISBA/20/LTC/12, annex). The Commission requested that the study be ready for review or that an update be provided on progress in this respect for part II of its session.

VI. Other matters

20. On 20 March, the Secretary-General informed the Commission with regret of the sharp deficit in the voluntary trust fund for the purpose of defraying the cost of participation of members of the Commission and members of the Finance Committee from developing countries in the meetings of the Commission and of the Finance Committee. The Commission expressed its grave concern over the matter, in particular at such a time, given the Council's recent in-depth request to the Commission regarding progress on the draft exploitation regulations. Furthermore, many members of the Commission, in particular those from Africa, Asia and Latin America and the Caribbean, would not be able to participate in the meetings of the Commission owing to a lack of financial support from the fund, which could raise the issue of a quorum at the meetings of the Commission in July. The Commission urged the Secretary-General to make every effort to solicit contributions to the fund and to bring the issue to the Council's attention during part II of its session.

21. On 22 March, the Commission was briefed on the outcome of the two meetings of a legal working group, convened in London in September 2017 and February 2018, on liability for environmental harm from activities in the Area.

22. On 23 March, the Commission had an extensive discussion on holding open meetings during part II of its session. The Commission reaffirmed the importance of transparency with regard to issues that were of general interest to members of the Authority and that did not involve discussions of confidential information. The Commission noted that the Council had held informal meetings during part I of its session to allow observers to participate in discussions of the draft exploitation regulations and that the secretariat had been facilitating stakeholder contributions to the development of a regulatory framework since 2014. Considering the Commission's agenda and expected workload for part II of the session, together with the schedule of meetings for the Commission and the Council, as well as the joint meeting with the Finance Committee, the Commission concluded that it would not be feasible to host an open meeting in July. The Commission requested the secretariat to prepare a discussion paper on how open meetings could be best structured in the future to facilitate meaningful input and exchanges in respect of particular subjects, including regulatory development.

Council

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Agenda item 12
Report of the Chair of the Legal and Technical Commission on the work of the Commission at its twenty-fourth session

Report of the Chair of the Legal and Technical Commission on the work of the Commission at the second part of its twenty-fourth session

I. Introduction

1. Part II of the 2018 session of the Legal and Technical Commission of the International Seabed Authority was held from 2 to 13 July 2018.

2. Twenty-seven members of the Commission attended the meetings. Théophile Ndougsa Mbarga was unable to attend. Andres Sebastian Rojas and Jun Wu resigned in May and June 2018, respectively. Following the previous practice, Shengxiong Yang participated in the meetings in his capacity as a candidate nominated by the Government of China for the election to fill vacancies on the Commission.

II. Activities of the contractors

A. Implementation of training programmes under contracts for exploration and allocation of training opportunities

3. On 2 July, the Commission was briefed on the selection of candidates for training programmes since part I of the 2018 session, held from 12 to 23 March, when it had been agreed that the training subgroup would work with the Secretariat in the intersessional period to identify appropriate candidates for training opportunities. Seven first-ranked and six alternate candidates were selected in the intersessional period on the basis of the recommendations of the training subgroup. The training places are as follows:

(a) One fellowship offered by Global Sea Mineral Resources (GSR) pursuant to its contract for polymetallic nodules to pursue a two-year master's degree programme in marine and lacustrine science and management (oceans and lakes) starting in the third quarter of 2018;

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(b) Six theoretical and at-sea training opportunities offered by JSC Yuzhmorgeologiya under its 2018/19 training programme pursuant to its contract for polymetallic nodules.

4. At part I of the 2018 session, the Commission had been invited to select an additional 11 candidates for three training programmes being offered by three contractors pursuant to their contracts for exploration with the Authority. On the basis of the suggestions of the training subgroup, 11 first-ranked and 11 alternate candidates were selected by the Commission. The training places are as follows:

(a) Five at-sea placements being offered by Deep Ocean Resources Development under its 2019 training programme;

(b) Two offshore internship placements being offered by GSR for the beginning of 2019 pursuant to its contract for polymetallic nodules;

(c) Four at-sea placements offered by China Minmetals Corporation broken down as follows: two places in 2018 and two in 2019.

5. Details on the selections are contained in document ISBA/24/LTC/9.

B. Annual reports of contractors

6. The Commission considered 27 annual reports on activities carried out by contractors in 2017, noting that two contractors did not need to report at that time on their activities in 2017 because the contracts had been signed recently. Of the reports reviewed, 17 were related to exploration for polymetallic nodules, 6 to exploration for polymetallic sulphides and 4 to exploration for cobalt-rich ferromanganese crusts. Following its previous practice, the Commission set up three working groups to review the geological and technological, environmental, and legal, financial and training aspects of the annual reports. In addition to specific comments on each report to be conveyed to the relevant contractor by the Secretary-General, the Commission made the following general comments:

(a) The Commission finds that most contractors met the reporting requirements under the standard clauses of the contracts. However, there were a few cases where the contractors were not completely fulfilling their contractual obligations;

(b) One contractor had again, during the period under review, not reported any substantive work, while another three contractors had continued not to fulfil the Commission's recommendations;

(c) The Commission welcomes the presentation of well-structured annual reports complying with the template it issued in 2015 (ISBA/21/LTC/15) by the overwhelming majority of contractors. However, several contractors are mixing the reporting of data in two contract areas or reporting by multiple contractors. The Commission reminds contractors that the commitments established under each contract represent a separate obligation. Each contract must be reported on separately and a work programme delivered for one contract cannot fulfil a contractor's obligations against another. Contractors' attention is drawn to the obligation to deliver all reported environmental and geological data in a digital and spatially georeferenced format compatible with the Authority's requirements (see ISBA/21/LTC/15, annex IV);

(d) Most contractors provided the financial statements in the format recommended by the Commission. The contractors that did not follow the recommended format have been brought to the attention of the Secretary-General, who is requested to remind those contractors to file their financial reports in

accordance with the recommended format. The Commission further notes that a number of contractors had not expended funds to the estimated levels of expenditure, falling short in some cases by as much as 80 per cent;

(e) The Commission welcomes the fact that most contractors had performed very well in this area of training. However, there is still a need to remind a few remaining contractors to fully implement their respective training programmes as agreed with the Secretary-General and included in their contracts as schedule 3;

(f) The Commission notes the larger number of cruises conducted in 2017 (14) and days at the sea (more than 1,000);

(g) The Commission notes that the Authority's system for resources classification is being adopted by contractors as mature exploration programmes. The Commission recalls that the identification of indicated or measured resources is expected to be completed by all contractors by the end of the contract for the exploration's term;

(h) The Commission considers that the completion of high resolution bathymetric surveys at an adequate scale to assist future exploitation plans of work is particularly important for contractors that have entered into a period of extension. The Commission welcomes the research to operationalize the development of seabed mining, in particular metallurgical studies and experiments in technologies for the extraction of the three types of marine resources;

(i) The Commission notes that at the current rate of progress, some contractors risk being unable to deliver the commitments for the initial five-year period of the plan of work established in its contract for exploration. The obligation to deliver the contract for exploration commitments applies to all contractors equally and is monitored by the Commission;

(j) Data provision by many contractors is good, but a number have not provided digital data for the last year. An ongoing issue to be addressed by some contractors is a reluctance to provide data prior to separate scientific publication or where they have been collected as part of an international research programme. The Commission stresses to contractors that data must be provided under the terms of the contract, and notes that data can be treated as confidential for a period, where necessary or appropriate;

(k) Most contractors have made good progress in the collection or analysis of baseline environmental data, making further progress in the analysis of existing or new data or in some cases taking stock of previous data and undertaking a review of many years of data collection that will support future sampling efforts. Two contractors have not advanced towards environmental objectives at all for two years in a row;

(l) In general, the Commission is pleased with the quality of the environmental studies being conducted. Contractors have all largely been following methodology as detailed in the recommendations for the guidance of contractors for the assessment of the possible environmental impacts arising from exploration for marine minerals in the Area (ISBA/19/LTC/8). Environmental studies, especially for biological communities, remain focused on seafloor data, but the Commission notes an increasing level of mid-water sampling, especially in cobalt-rich crust environments. There were again some issues with small sample sizes and insufficient numbers of sampling stations for describing environmental variability in some areas, as well as some differences in methodology or sampling equipment that may constrain regional-scale analyses;

(m) Some contractors have taken less notice than expected of the Commission's evaluation on previous annual reports. The Commission goes to considerable lengths to review reports and provide constructive advice to contractors where the Commission feels improvements in the collection or analysis of environmental data can be made. While the Commission acknowledges that the responsibility to carry out the plan of work rests with the contractor, the Commission will continue to advise contractors in order to ensure that the quality of the baseline data being collected is as high as possible;

(n) The Commission notes, and expresses support for, the continuing trend of collaboration between contractors in such areas as methodological and analytical standardization, linkages between contractor scientists and international research programmes, sampling in areas of particular environmental interest and exploration areas, and shared vessel time between contractors.

7. It is recommended that the Secretary-General communicate the various issues identified during the review to the respective contractors and request the contractors to address those issues.

C. Report on the periodic reviews of the implementation of plans of work for exploration

8. On 2 July 2018, the Commission took note of the report on the periodic reviews of the implementation of plans of work for exploration (see ISBA/24/LTC/8) and welcomed the invitation by the Secretary-General to review the reports and other information provided by the contractors and to make such recommendations as might be deemed appropriate to assist him in carrying out his responsibilities under the regulations, including recommendations on any additional data and information that might be necessary for the purposes of the reviews. The Commission will consider ways to give effect to that invitation at its next session, in March 2019.

III. Regulatory activities of the Authority

A. Consideration and adoption of the draft regulations on the exploitation of mineral resources in the Area

9. The Commission devoted the first week of meetings to a review of the draft regulations on the exploitation of mineral resources in the Area (see ISBA/24/LTC/WP.1 and ISBA/24/LTC/WP.1/Add.1), reflecting its discussions at its March 2018 meetings, together with a review of the note by the secretariat on the draft regulations (see ISBA/24/LTC/6). The Commission made available a revised text of the draft regulations (see ISBA/24/LTC/WP.1/Rev.1) for consideration by the Council. In addition and at the request of the Council (see ISBA/24/C/8, para. 20), the Commission prepared a briefing note for the Council on matters requiring further examination by the Commission and matters on which it seeks the Council's direction or guidance (see ISBA/24/LTC/20).

B. Recommendations for the guidance of contractors for the assessment of possible environmental impacts arising from the exploration for marine minerals in the Area

10. On 12 July, the Commission considered the draft revised recommendations for the guidance of contractors for the assessment of possible environmental impacts

arising from the exploration for marine minerals in the Area (ISBA/19/LTC/8) and agreed to work on and adopt the draft intersessionally and submit the final revised recommendations to the Council at its March 2019 session.

IV. Development of other environmental management plans in the Area

11. On 10 July, the secretariat reported on the outcomes of the Qingdao workshop held in May 2018 on the development of regional environmental management plans (REMPs) for cobalt-rich crusts in the north-west Pacific and of the Szczecin workshop held in June 2018 on development of REMPs for polymetallic sulphides in mid-ocean ridges. The outcomes of both workshops would be published as technical studies of the Authority. The Commission commended the workshops for having developed road maps for the development of REMPs. It was suggested that in developing new REMPs, lessons should be learned from the implementation of the existing REMP in the Clarion-Clipperton Zone. Some members also suggested that the geographic extent of REMPs should take into account appropriate environmental conditions and ecological biogeography. It was suggested that in developing a REMP for the cobalt-rich ferromanganese crust in the north-west Pacific, consideration should be given to collaborating with the coastal states. The possibility of using historic data in the development of the REMP could be explored.

V. Implementation of the data management strategy of the Authority

12. On 10 July 2018, the secretariat made a presentation on the status and projections of the database, which was followed by a live demonstration of the operability of the database. The Commission noted with appreciation that the database is scheduled to come on stream in October 2018, commended the secretariat for its work in that respect and encouraged it to continue its ongoing work and add further functions, such as some standard spatial analysis and mapping routines to assist in making informed decisions. The Commission considered that the full implementation of the data management strategy of the Authority would facilitate the work of the Authority, the contractors and other users. It was suggested that the capabilities of the database could be expanded by creating linkages between the database of the Authority and other databases.

VI. Other matters

13. On 4 and 11 July, the Commission considered both environmental impact assessments and their associated monitoring plans, submitted by the German Federal Institute for Geosciences and Natural Resources and GSR, respectively, to test mining components. It took note of the progress made by the Secretariat in the review process, which is projected to be finalized by end-September 2018. In the light of the review, the Commission was pleased to see that the contractors had been following its recommendations as contained in document ISBA/19/LTC/8. The Commission agreed that a working group would continue the review process intersessionally to ensure the completeness, accuracy and statistical reliability of both submissions, and would communicate its comments to the Secretary-General at the earliest opportunity. The Commission also agreed to set up another working group to consider the process for its review of the proposal of an environmental impact assessment for test mining or test mining components in the future.

14. On 10 July, the Commission took note of a report submitted by the legal working group on liability for environmental harm and decided to consider the report and subsequent actions at its next session, in March 2019.

15. During this session, the Commission established a working group to investigate a systematic approach to facilitate the secretariat's management of the relinquishment of areas under the contracts for exploration for polymetallic sulphides and for cobalt-rich ferromanganese crusts. The working group expects to be able to report the outcomes of its investigation to the Commission at its March 2019 session.

International Seabed Authority ISBA/24/C/10

Council

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Agenda item 11
Draft regulations for exploitation of mineral resources in the Area

Functions of the organs of the Authority in relation to the preparation of rules, regulations and procedures on exploitation of mineral resources in the Area and in relation to the system of compensation envisaged under article 151 (10) of the United Nations Convention on the Law of the Sea

Note by the secretariat

I. Introduction

1. In discussions in the Council during the first part of the twenty-fourth session of the International Seabed Authority, several delegations requested greater clarity on the functions of the organs of the Authority with regard to the process of drafting and approving rules, regulations and procedures relating to the exploitation of mineral resources in the Area. The purpose of the present note is to review the relevant provisions of the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 and to explain the specific functions of the Assembly, the Council, the Legal and Technical Commission and the Finance Committee.

2. In the note, the provisions of the Convention, as read with the Agreement, are also reviewed in relation to the system of compensation envisaged under article 151 (10) of the Convention, given that the changes made in that system under the Agreement will affect how the organs of the Authority carry out their functions. For ease of reference, the content of the note is summarized in tabular format in the annex.

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II. Functions of the organs in relation to the drafting of rules, regulations and procedures on exploitation of mineral resources in the Area

A. Assembly

3. The supreme organ of the Authority is the Assembly, to which all other organs are accountable (art. 160 (1)). Under article 160 (2) (f) (ii), the Assembly is required to consider and approve the rules, regulations and procedures of the Authority, including those relating to prospecting, exploration and exploitation, and any amendments thereto, provisionally adopted by the Council pursuant to article 162 (2) (o) (ii). If the Assembly does not accept the recommendation of the Council on any such matter, it returns the matter to the Council for further consideration. The Council then considers the matter in the light of the views expressed in the Assembly.

4. The Assembly must also consider and approve, upon the recommendation of the Council, the rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of developing States and peoples who have not attained full independence or other self-governing status (art. 160 (2) (f) (i)). If the Assembly does not approve the recommendations of the Council in relation to the matters referred to in article 160 (2) (f) (i), it returns them to the Council for further consideration in the light of the views expressed by the Assembly.

5. In addition, under article 160 (2) (g), the Assembly, acting on its own behalf, decides upon the equitable sharing of financial and other economic benefits derived from activities in the Area.

6. The role of the Assembly in relation to the economic assistance fund is dealt with in section III of the present note.

B. Council

7. Under article 162 (2) (o) (i), the function of the Council is to recommend to the Assembly rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions made pursuant to article 82, taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status. Furthermore, under article 162 (2) (o) (ii), it adopts and applies provisionally, pending approval by the Assembly, the rules, regulations and procedures of the Authority, and any amendments thereto, taking into account the recommendations of the Legal and Technical Commission or other subordinate organ concerned. Those rules, regulations and procedures relate to prospecting, exploration and exploitation in the Area. The scope of the matters covered by the regulations is set forth in greater detail in article 17 of annex III to the Convention, on basic conditions of prospecting, exploration and exploitation.

8. Decisions of the Council in relation to the above-mentioned matters are made by consensus.

9. The Council is also responsible for establishing appropriate mechanisms for directing and supervising a staff of inspectors whose task will be to inspect activities in the Area (art. 162 (2) (z)).

C. Legal and Technical Commission

10. The task of the Legal and Technical Commission under article 165 (2) (f) is to formulate and submit to the Council the rules, regulations and procedures referred to in article 162 (2) (o), taking into account all relevant factors, including assessments of the environmental implications of activities in the Area. This comprehensive provision makes clear that, except where otherwise specified in the Convention or the Agreement, the primary responsibility for formulating regulations, including on all the matters specified in article 17 of annex III, rests with the Commission.

11. The Commission will also make recommendations to the Council regarding the direction and supervision of the staff of inspectors referred to above (art. 165 (2) (m)).

D. Finance Committee

12. The Finance Committee was established under the Agreement and its functions are specified under section 9 of the annex to that Agreement. Those functions affect the way in which other organs of the Authority perform their functions under the Convention in several ways. In particular, the Assembly and the Council must take into account the Committee's recommendations in their decisions on any of the matters listed in section 9 (7), including the administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority; and rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.

13. In addition, section 7 (1) (a) of the Agreement provides that, in connection with the system of compensation to be established by the Authority under article 151 (10) of the Convention, the amount to be set aside for the economic assistance fund[1] will be determined by the Council, upon the recommendation of the Committee. That aspect is discussed further in section III of the present note.

14. Based on the above-mentioned provisions, the role of the Committee is to make recommendations to the Council on:

(a) The rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon. That is a matter solely within the competence of the Committee;

(b) The amount to be set aside for the economic assistance fund, once that fund has been established. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions are used for this purpose;

(c) Financial matters with administrative and budgetary implications for the funds of the Authority that arise in connection with the exploitation regulations. In the current draft (ISBA/24/LTC/WP.1), this would include:

(i) Draft regulations 82, 84 and 85: annual, administrative and other applicable fees. The draft regulations provide for an annual reporting fee, an application processing fee and other administrative fees. Appendix II to the draft regulations contains a list of administrative fees. They would be charged for all services

[1] Based on the Agreement, the form of assistance for developing countries that suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, is to be limited to an economic assistance fund created from the payments made by contractors, including the Enterprise, and voluntary contributions.

provided by the Authority at a rate to be fixed from time to time by the Council to ensure that they cover the Authority's expected administrative costs of the service provided (draft regulation 86 (1)). Any Council decision in that regard must be based on the Committee's recommendations (Agreement, sect. 9 (7) (e));

(ii) Draft regulation 83: annual fixed fee from the date of commencement of commercial production. The fee will be set by the Council (Agreement, sect. 8 (1) (d)). Although there is no reference in the Agreement to the Finance Committee in that regard, it should be consulted because the fee will have budgetary implications, given that it will have the effect of offsetting the assessed contributions of member States to the administrative budget of the Authority;

(iii) Draft regulation 27: environmental performance guarantee. The form and amount of any such guarantee would need to be established by the Legal and Technical Commission. The Committee would need to be consulted with regard to the appropriate financial rules and procedures for holding such guarantees (for instance, if they were provided in cash);

(iv) Draft regulations 52–54: environmental liability trust fund. The purpose of such a fund and options for financing are yet to be discussed by the Council. Should it be established, the Committee would need to be consulted with regard to its rules of procedure and the method of its funding.

III. System of compensation under article 151 (10) and the role of the Economic Planning Commission

15. Article 151 of the Convention, which deals with the Authority's production policies, was largely superseded by the Agreement. Article 151 (10), albeit considerably modified by the Agreement, provides for the establishment by the Assembly, upon the recommendation of the Council and based on advice from the Economic Planning Commission, of a system of compensation or the adoption of other measures of economic adjustment assistance, including cooperation with specialized agencies and other international organizations, to help developing countries that suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area.

16. The implementation of article 151 (10) of the Convention is modified considerably by the Agreement. The functions of the Economic Planning Commission are, pursuant to the Agreement, being carried out by the Legal and Technical Commission until such time as the Council decides otherwise, or until the approval of the first plan of work for exploitation. Those functions, which are set out in article 164 of the Convention, are also limited by the Agreement to a study of the potential impact of mineral production from the Area on the economies of developing land-based producers of those minerals that are likely to be most seriously affected, with a view to minimizing their difficulties and assisting them in their economic adjustment (sect. 1 (5) (e)).

17. The Agreement further provides that the policy of the Authority with regard to assisting developing countries that suffer serious adverse effects on their export earnings or economies is to be based on a series of principles set forth under section 7. They include that assistance under article 151 (10) should be provided through an economic assistance fund created from a portion of the Authority's funds exceeding those necessary to cover the administrative expenses of the Authority. The amount of the fund is to be determined by the Council, based on a recommendation of the

Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions are to be used for this purpose. All related provisions of the Convention are to be interpreted accordingly.

IV. Conclusion

18. The Council is invited to take note of the present note, which is presented for information purposes only.

Annex

Summary of the functions of the organs of the Authority in relation to the preparation of rules, regulations and procedures on exploitation of mineral resources in the Area and in relation to the system of compensation envisaged under article 151 (10) of the United Nations Convention on the Law of the Sea

Task	*Organ responsible*	*Comments*
Approval of rules, regulations and procedures relating to exploitation	Assembly	Approval of rules, regulations and procedures, as provisionally adopted by the Council. If the Assembly does not approve, it returns the matter to the Council for further consideration.
Approval of rules, regulations and procedures on the equitable sharing of financial and other economic benefits (and the payments and contributions made pursuant to article 82)	Assembly	Approval upon recommendation of the Council. If the Assembly does not approve, it returns the matter to the Council for further consideration.
Decisions on equitable sharing of benefits	Assembly	No prior consideration or recommendation of the Council is required.
Recommendation to the Assembly of rules, regulations and procedures on the equitable sharing of financial and other economic benefits (and payments and contributions made pursuant to article 82) (art. 162 (2) (o) (i))	Council (by consensus)	Decisions of the Assembly and Council must take into account the recommendations of the Finance Committee where they concern rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon (Agreement, sect. 9 (7) (f)).
Adoption and provisional application, pending approval by the Assembly, of rules, regulations and procedures relating to prospecting, exploration and exploitation in the Area (art. 162 (2) (o) (ii))	Council (by consensus), taking into account recommendations of the Legal and Technical Commission or other subordinate body concerned	Decisions of the Assembly and Council must take into account the recommendations of the Finance Committee where they concern administrative and budgetary implications of proposals and recommendations involving expenditure from the funds of the Authority (Agreement, annex, sect. 9 (7) (e)).
Establishment of an appropriate mechanism for directing and supervising a staff of inspectors (art. 162 (2) (z))	Council	

Task	*Organ responsible*	*Comments*
Formulation and submission to the Council of the rules, regulations and procedures referred to in article 162, (2) (o), taking into account all relevant factors, including assessments of the environmental implications of activities in the Area (art. 165 (2) (f))	Legal and Technical Commission	
Submission of recommendations to the Council regarding the direction and supervision of a staff of inspectors (art. 165 (2) (m))	Legal and Technical Commission	
Submission of recommendations to the Council regarding the establishment of a monitoring programme to observe, measure, evaluate and analyse the risks or effects of pollution of the marine environment resulting from activities in the Area (art. 165 (2) (h))	Legal and Technical Commission	
Establishment of a system of compensation or other measures of economic adjustment assistance to assist developing countries that suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area (art. 151 (10))	Assembly, upon the recommendation of the Council and based on advice from the Finance Committee and Economic Planning Commission (art. 160 (2) (l) as modified by the Agreement, annex, sect. 7)	(1) The functions of the Economic Planning Commission are to be performed by the Legal and Technical Commission until such time as the Council decides otherwise or until the approval of the first plan of work for exploitation (Agreement, annex, sect. 1 (4)). (2) The policy of the Authority of assisting developing countries will be based on an economic assistance fund established using a portion of the funds of the Authority which exceeds those necessary to cover its administrative expenses. The amount set aside for that purpose will be determined by the Council upon the recommendations of the Finance Committee. Only funds from payments received from contractors, including the Enterprise, and voluntary contributions shall be used (Agreement, annex, sect. 7).
Determination of the amount of the economic assistance fund	Council	Upon the recommendation of the Finance Committee

Task	*Organ responsible*	*Comments*
Provision of advice to the Council on the establishment of the economic assistance fund and on the matters referred to in article 164 (2)	Legal and Technical Commission (performing the functions of the Economic Planning Commission)	